Direction des Affaires Fiscales

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Double non-taxation

MEDEF

Informer

Comments on the European Commission Consultation paper on double non-taxation

MEDEF welcomes the opportunity of providing comments on the Commission consultation paper on double non-taxation.

MEDEF understands that the aim of this consultation is to fight against artificial tax schemes, a goal MEDEF is fully supportive of.

Combating these schemes is a way of facilitating business development within the EU and of promoting cross-border trade by ensuring companies a legally fair and secured single market. This consultation therefore makes complete sense and correlates with the previous one on double taxation.

MEDEF, as the French business federation, acts as the voice of its members' interests as well as an interface between them and the stakeholders. Its role is not to collect specific information on its members, nor does it act as a counsel.

However, MEDEF is fully concerned by this consultation since it is of utmost importance to clarify the situation on double non-taxation.

When double non-taxation is the result of aggressive tax planning, it should be tackled with appropriate tools. This is already the case in many member States with provisions or case law prohibiting "abuse of law". Similarly, European initiatives have multiplied : the Code of conduct, the state aid legislation, the coordination on CFC rules and thin capitalization legislation, the inclusion of the notion of "subject to tax" in the redrafting of directives, the creation of a working group on fighting fraud also point in that direction. The ECJ has equally stated on several occasions that "wholly artificial arrangements aimed solely at escaping tax" should be fought against. Some Members States refer to this notion when implementing their anti abuse regime in an EU context.

In this case, MEDEF is of the opinion that double non-taxation is already dealt with both at national and European's level with effective means and results.

However, double non-taxation is not always the result of an aggressive tax planning. In the examples mentioned by the consultation, double taxation as well as double non-taxation can indeed arise by the mere application of different tax regimes. The coexistence of non-coordinated regimes and interpretations, the combination of opposed principles and tax level differences may subject businesses to double taxation if they are used in an unfavorable way imposed by economic constraints. In this respect, MEDEF would like to underline the fact that if taxation is part of the companies' decision process when doing business, it is only one of the many parameters taken into consideration. It is neither the sole nor by far the first. This explains why companies are so frequently subject to double taxation.

It is therefore not possible, apart from proven cases of aggressive tax planning without economic justification, to consider that the situations mentioned in the consultation are de facto abusive. Otherwise, it would lead to an undue reverse of the charge on the taxpayer.

MEDEF would also like to emphasize the fact that, as mentioned in page 4 §2 of the Commission consultation, national legislation on how to tax a revenue received by a resident or non-resident falls outside the scope of the consultation on double non-taxation. This matter is indeed a question of tax sovereignty and competence. It should be borne in mind that attractive national tax regimes consistent with EU legislation and recommendations cannot be considered as abusive. Neither is the use of these incentives by the taxpayer, as long as it is economically justified and since freedom of establishment prevails.

Unless the promotion of a generalised tax harmonisation in the EU, which could - in the long term- help avoiding double non-taxation and double taxation, it is difficult to see how mismatches of legislations could be totally eradicated.