



**Irish Tax
Institute**

Leaders in Tax

Irish Tax Institute (Transparency Register: 08421509356-44)

**European Commission Consultation on Improving Double Taxation Dispute
Resolution Mechanisms**

***Supplementary Comments which should be read in conjunction with our
response to the questionnaire***

OECD's Multilateral Instrument

The Irish Tax Institute is very supportive of the minimum standard put forward by the OECD in BEPS Action 14 and we recognise that the European Commission has played an important role in developing these proposals.

We believe that improvements to the current dispute resolution mechanism can be best achieved by strengthening existing tax treaties and, if carefully designed to accord with other international dispute resolution mechanisms, by taking some complementary action at an EU level. Dispute resolution will be one of the key elements addressed in the OECD's Multilateral Instrument which is currently being developed by an OECD working group. This instrument is expected to be finalised by the end of 2016 and a key objective of the EU should be to encourage Member States to participate in this working group.

EU Action

While we expect a workable solution with widespread international support to be developed by the OECD over the coming years, it is important that taxpayers in Member States can access an effective dispute resolution mechanism in the interim. We welcome the European Commission's efforts in this regard.

New EU Instrument

We note that Option C in the questionnaire proposes "*a new comprehensive EU legal instrument providing for an effective elimination of double taxation at EU level*". The Institute believes that such a mechanism could help to resolve double tax disputes if designed carefully and if it contains the following critically important elements;

- It must be a voluntary mechanism which taxpayers could opt to initiate
- It must be easily accessible and result in the effective and timely resolution of disputes for taxpayers
- It must be compatible with other international initiatives
- Disputes should be heard in private

It is unclear from the questionnaire how the role of the CJEU would interact (if at all) with any new EU instrument. Double tax treaties are not instruments of EU law so we do not believe

that the CJEU is necessarily best placed to be the ultimate arbitrator under these proposals. The Institute would instead favour the establishment of an EU arbitration panel which would be made up of individuals with more relevant skills in the areas of tax, law and arbitration. We believe that this would lead to a more effective process which would encourage Member States to support the introduction of any new EU instrument.

A great deal of questions remain about the instrument and we would need to see further details before endorsing any such proposals. It is imperative that a separate and detailed public consultation be undertaken by the Commission on the design of legislation and any new EU arbitration forum before any final decisions are taken.

As with all tax matters, it is important that any instrument would be subject to unanimous agreement by all 28 Member States before being adopted.

EU Arbitration Convention

The EU Arbitration Convention has proved useful to date (if not used as widely as perhaps it could be) and consideration should be given to broadening its remit beyond transfer pricing disputes. We have also had feedback from members that there can be uncertainty around the application of the time limits set-out in the Convention. It is important that there are clearly defined provisions around the application of the Convention.