UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

European Commission
Directorate-General
Taxation and Customs Union
Direct Taxation, Tax Coordination, Economic Analysis and Evaluation
Company Taxation Initiatives

May 29, 2012

To Whom It May Concern,

The United States Council for International Business appreciates the opportunity to comment on the European Commission's consultation on "The internal market: factual examples of double non-taxation cases," published on February 29, 2012.

USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and prudent regulation. Its members include top U.S.-based global companies and professional services firms from every sector of our economy, with operations in every region of the world. With a unique global network encompassing leading international business organizations, USCIB provides business views to policy makers and regulatory authorities worldwide, and works to facilitate international trade and investment.

USCIB is concerned with both the form and content of the consultation. The form of the consultation presupposes the existence of problem, identifies the problem with the pejorative term "double non-taxation," and only provides the opportunity to comment on how the problem might be addressed. There is no acknowledgement that countries within the EU have retained the ability to develop their own tax policy and that this sovereignty inevitably results in lack of harmonization.[1] Further, economic literature concludes that corporate taxes are the least efficient[2] and that the ultimate cost of corporate tax is not borne by the corporation but rather is borne by shareholders, consumers, or labor. Thus, reducing corporate tax may have multiple beneficial effects on the return to shareholders, the price of consumer goods, and wages paid to labor. These effects should be considered in any discussion of corporate tax. In particular, when determining whether taxes are paid on corporate earnings, the combined corporate/shareholder tax burden on the ultimate corporate shareholder should be considered. This combined corporate/shareholder rate is more indicative of whether the company is subject to a competitive advantage or disadvantage than whether any particular item of income is taxed once, twice or not at all.

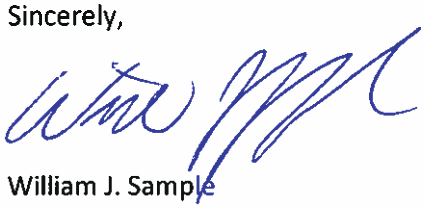
[1] See OECD Paper on Hybrid Mismatch Arrangements, Tax Policy and Compliance Issues p. 13 which recognizes that harmonization even for the most common types of hybrid arrangements is impossible.
[2] OECD (2010), Tax Policy Reform and Economic Growth, OECD Publishing at p. 10.

USCIB participated in the development of the OECD guidelines for Multinational Enterprises and supports the Taxation principles set forth in those guidelines. Those guidelines provide:

> [E]nterprises should comply with both the letter and the spirit of the tax laws and regulations of the countries in which they operate. Complying with the spirit of the law means discerning and following the intention of the legislature. It does not require an enterprise to make payment in excess of the amount legally required pursuant to such an interpretation.

In the absence of harmonization among countries, this requirement to comply with both the letter and spirit of the law, combined with the recognition that taxpayers are not required to pay more than they owe, permits taxpayers to use legitimate planning techniques.

Sincerely,



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