

European Commission
Directorate-General for Taxation and Customs
Union
Direct Tax Policy & Cooperation - Unit
TAXUD/D2
Rue de Spa 3, Office SPA3 06/069
B-1049 Brussels
Belgium

THE PRESIDENT

Re: Additional Information on the Consultation on Improving Double Taxation Dispute Resolution Mechanisms

Dear Sirs or Madams,

the tax advisers and accountants represented by our member organisations primarily serve small and medium businesses. A big part of their daily business is tax returns and -declarations, but they also oversee tax audits and tax litigation. Current dispute resolution mechanisms in cases of double taxation of international companies could be designed more effective in many areas and thus disburden companies financially and administratively. We therefore welcome the intention of the European Commission and want to add the following aspects to our responses to the public consultation:

Possible causes of double taxation, harmonization of tax law

The current dispute resolution procedures only extend to disputes over transfer pricing of intercompany goods and services and the related determination of taxable income. However, different tax treatments affect far more issues, including the allocation of expenses for management fees, licenses, patents or interest between related or associated companies. The most effective way to prevent different assessments of the financial administrations of the Member States would be to establish uniform, universal standards within the EU. With regard

to a taxation system that is fair to all taxpayers, the attention should mainly focus on the cases of double taxation, but also on measures to prevent double non-taxation.

Different audit periods, changeability of tax assessments

Another problem of tax audits in the international context are different periods for tax reviews and different timings between states. Tax audits mostly take place years after the end of fiscal years, tax audits of bigger undertakings can take years. Differing organization of tax audits and different procedures may lead to situations where the same issue, like the accounting from the parent company to a subsidiary, is reviewed at different times. One possible outcome can be that changes of valuation as a result of the tax audit in one country cannot be followed in the other country due to an ended prescription for tax assessment. From our point measures for a better and matching timing of tax audits and procedural tax laws are needed.

Financial risk and time expenditure of dispute resolution

We believe that the number of final settlement procedures currently observed doesn't reflect the full number of unsettled tax disputes and cases of double taxation. We assume that a bigger number of tax payers don't call for a dispute resolution, because the expected time expenditure of the process and the anticipated internal and external costs are higher than the amount of tax paid twice. In addition the outcome of the dispute resolution procedure is uncertain. After considering the pros and cons mostly large undertaking seek for such a mechanism – while this is not an option for SMEs in most of the cases. A new dispute resolution mechanism should be less time consuming for the undertakings and so reduce the administrative costs especially for SMEs. This would lead to a better acceptance and to a fairer competition between large companies and SMEs.

Constraint to find a settlement

Most important for effective dispute resolution mechanisms from the tax payers' point of view is an outcome that prevents double taxation. We therefore strongly support a tool that leads to constraints to find a settlement between the tax authorities. The two step-approach of Art. 25 OECD model tax convention and the EU arbitration convention is one possible way for such a

tool. It puts pressure on the involved member states to find an agreement. If this fails, the tax payer can strive for arbitration.

The current mechanism of negotiation between the tax authorities about a tax assessment is mostly described as a “black box” and needs to be made more transparent to the tax payer. A well-ordered procedure that regulates timing and proceeding would make the mechanism more reliable to tax payers and their advisers and also raise the legal certainty. It is also necessary to involve the tax payer and his adviser in such a mechanism. This includes an information right as well as a right to be heard. For the implementation of such an improved dispute resolution mechanism the tax administrations of member states must be equipped with personnel and material resources.

Possible addition: bilateral and international tax audits

With regard to the costs of dispute resolution and the consumed time tax payers would prefer a mechanism that prevents double taxation during the assessment period. The Tax Administration of Bavaria together with their colleagues from Vienna and Bolzano try to establish a model project of international tax audits. The tax auditors of the parent company and the subsidiary (or of the company and the foreign permanent establishment respectively) perform the tax audit at the same time and at the same place. This makes it easier to find a unique clarification of the facts. This procedure eliminates cases of different interpretation and therefore lowers the number of possible cases of double taxation before the issuance of tax assessments. Furthermore the tax payer profits because he can deal with both tax audits at one time. We believe this is a promising model to lower the number of cases of double taxation and should be brought forward.

Sincerely yours,

Philippe Arraou
- President –