Regarding the options proposed by the consultation document for further EU action on double taxation dispute resolution, we have noted that option B would partly meet the objectives for scope and efficiency. This is because we are in favour of the following part of the Commission’s proposal in option B: “*requiring Member States to implement measures that foresee reaching a decision or a mutual agreement on eliminating a double taxation case within a given time limit. If Member States fail within this period [they] are requested to appoint an arbitration or mediation body to be in charge of taking a final decision*”. However we find the second paragraph of option B (“*a requirement that EU Member States who have agreed in bilateral treaties with a third country or another Member States to apply a more effective dispute resolution mechanism (e.g. arbitration), will be obliged to apply the same mechanism with all the other Member States (Most Favoured Nation clause*”) is contrary to the agreement reached by the OECD on action item 14 (Dispute Resolution) of the BEPS project.

We would also like to note the following additional points in relation to the other options outlined in section 4.2 of the consultation:

* We agree with certain aspects of the proposal in option A i) (“encouraging Member States to adopt or revise the mechanisms for double taxation dispute resolution in their double tax treaties in accordance with the conclusions reached during the monitoring process of the EU arbitration convention at the level of the EU Joint Transfer Pricing Forum and the OECD BEPS Action 14”). We would however also highlight that for any such action to be effective it would have to be underpinned by an arbitration regime.
* In terms of option A ii) (“EU encouraging Member States to introduce a specific enforcement mechanism in their tax treaties which refers to article 273 of the TFEU and gives power to the CJEU jurisdiction to ultimately decide any remaining double-taxation dispute resolution between EU Member States after a period of time”), we agree with the principle of creating a binding resolution mechanism (which would involve either arbitration or legally enforceable decisions). We would however urge the Commission to consider balancing in their proposal the principle of enforceability (which would seem to be addressed by this option) with the need for ensuring this is only used when Member States options for solving the dispute are exhausted. We are also concerned that the use of a full court process is not efficient, and would prefer mandatory binding arbitration as agreed by 20 countries as part of the OECD’s BEPS Project.
* Option C (“a comprehensive new EU legal instrument”) would seem to fail to address the issue of double taxation disputes in a timely manner. The process for agreeing a new EU legal instrument in the area of taxation can be very lengthy and the outcome of the negotiations would create a period of uncertainty for both taxpayers and tax authorities.

We also note that the OECD’s recommendations on BEPS Action 14 (Dispute Resolution) included a commitment by 20 countries to develop a mandatory binding arbitration process for dispute resolution.  We believe that the Commission’s further work on Double Taxation Dispute Resolution mechanisms should include work on a mandatory binding arbitration process.  This will be at its most effective if the mandatory binding arbitration process is consistent with that developed with countries outside the EU, and therefore we would encourage all EU countries to commit to the mandatory binding arbitration process being developed by those 20 countries and the OECD.  This should ultimately bring greater benefits for EU businesses which operate internationally and therefore for the EU as a whole.