Consultation on Improving Double Taxation Dispute Resolution Mechanisms:

**CBI’s response - supporting comments**

**Q: 2.1. What do you think about how double taxation disputes can be solved at best?**

*Double taxation related tax disputes are likely to significantly increase in the future as a result of the OECD BEPS changes. Current dispute resolution mechanisms are already lengthy and incur excessive costs for both taxpayers and governments. To mitigate this the EU should encourage a commonly agreed pre-MAP process which taxpayers have the right to participate in. The UK's LSS process or joint audits might be models to study for that to work, for which the cooperation of all parties*

*As a practical matter, encouraging or mandating the use of joint audits that roll automatically into a MAP may be of assistance in resolving some complex multi-country transfer pricing cases, particularly those where the transfer pricing method applied is the profit split. The advantages of joint audits include the simultaneous examination of facts and analyses by tax authorities, with the objective of achieving agreement on the outcome. There would also be efficiencies for businesses and tax authorities in terms of considering fact-heavy cases only once as both the audit and dispute resolution process rather than at two distinct stages.*

**Q: 2.3 Do you think the dispute resolution mechanisms currently available in the EU (e.g. DTC or AC) are sufficient as regards scope, enforceability and efficiency?**

*Tax authorities frequently operate a threshold mechanism below which inter-country dispute resolution cannot be triggered.  Whilst that may be practically understandable, it discriminates against smaller transactions and companies.   
  
Applying the EU Arbitration Directive after domestic appeals have been exhausted can be problematic e.g. Italy takes the view that at that stage there is no possibility to apply the directive.  A consistent and absolute right to access that directive should be consistently applied across all countries.*

**Q: 4.1 Do you want the EU to pursue the following directions?**

*- Enhance dispute resolution measures for other non-TP aspects such as resolution on attribution of profit to Pes;*

*- Ensure any measures are compatible, full, in line with the BEPS outcomes agreed in 2015 and afterwards;*

*- Encourage all the Member States to sign up to the mandatory binding arbitration process that the OECD is now developing, following the conclusion of BEPS Action 14. In turn, this would reduce the need for the various ad hoc suggested solutions and have the advantage of achieving wider international consistency.*