

Consultation on Improving Double Taxation Dispute Resolution Mechanisms

FINAL COMMENTS

Enterprises acting in more than one Country have relevant administrative expenses in order to comply with tax legislations having effect on a cross border basis (i.e. transfer pricing procedure, allocation of profits and costs among the mother company and its foreign branches, etc).

Such a procedural duties and the related administrative costs not necessarily involve an effective and consistent reduction of potential tax liabilities connected with double taxation issues.

Such a kind of circumstances could involve a significant limitation of the fundamental freedoms granted by the EU Treaties.

In our view an efficient and enforceable Double Taxation Dispute Resolution Mechanism should contribute to the scope of reducing double taxation dispute and to grant the fundamental EU freedom provided that

- 1. The tax payers have the possibilities to reach advance agreements allowing tax payers themselves and Member States to fix in advance where a given income is taxable and how a given double taxation issue is settled;**
- 2. The tax payers have a relevant role and consequently are involved in the double taxation dispute concerning their case as it could happen in case of creation of a comprehensive new EU legal instrument (Chapter 4.2 - Option C);**
- 3. The decisions of such a comprehensive new EU legal instrument can be appealed in front of the CJEU both in case the decision is not compliant with the DTC applicable in the case under examination both in the case the decision is not compliant with EU Treaties.**
- 4. More in detail, such double taxation dispute resolution mechanism should be articulated in such a way as to achieve an agreement in all cases and to ensure consistency. A way to achieve this could be to devote the case to the ECJ anytime the tax authorities of the countries involved do not reach an agreement within a pre set deadline and/or in case of appeal by the taxpayer in relation to a reached agreement. The ECJ would operate in this case as an arbitration court. Its decisions would be based on the DTC principles and the EU Treaties as to the merits and (i) based on a set. The decisions by the court would create over time a set of consistent precedents.**

We recognize that this would imply a significant extra burden on the ECJ, but the overall cost would be outweighed by the benefits of more certainty and more consistency as a bulk of case law consolidates over time.

For the implementation of this objective we could also suggest the creation of an EU Arbitration Board, with the function to compose any dispute that may arise between the tax administrations of the Member State.