

Summary Report  
Responses received on  
The Commission's consultation on  
improving double taxation dispute  
resolution mechanisms

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**Directorate General for Taxation and Customs Union**

May 2016

## ***I. Background***

Double or multiple taxation results in a higher tax burden, cash-flow disadvantages, higher administrative and compliance costs and burdens. This may deter affected citizens from taking full advantage of their right to operate freely across borders in the EU's Internal Market.

A public consultation on double taxation conventions and the internal market was launched by the Commission in 2010 (the 2010 public consultation). The consultation confirmed that despite the advantageous situation in the EU as regards the availability of DTC in the area of direct taxation, the instruments to relieve double taxation were regarded as still not functioning properly. The consultation identified that most of the issues arise in the context of business taxation.

Based on the outcome of the 2010 public consultation the Commission undertook various measures to examine the scope and magnitude of the problems and, particularly, what exactly prevents the existing double taxation dispute resolution mechanisms from a smooth functioning. Action taken by the Commission as a follow up to the public Consultation were

- November 2011: Communication from the Commission on Double taxation in the Single Market (COM (2011) 712 final)
- March 2012: Change of Statistics on functioning of the EU Arbitration Convention
- December 2012: Organisation of an inter-governmental seminars on double taxation issues and insufficiency of international agreements
- March 2013: Launch of a study to identify and describe most frequent double taxation cases in the internal market (June 2013)
- April 2013: Discussion incl. questionnaires to MS and stakeholder meetings
- October 2013 to March 2015: Discussion in EU Joint Transfer Pricing Forum, (a Commission Expert Group) on improving the functioning of the Arbitration Convention
- June 2014: Creation of expert group on cross border tax obstacles for individuals within the EU
- June 2014: Creation of expert group on inheritance tax obstacles within the EU
- March 2015: Report of the EU JTPF on Improving the functioning of the Arbitration Convention

As a consequence of these findings, the Commission included the objective to improve double taxation dispute resolution mechanisms into its Action Plan for a Fair and Efficient Corporate Tax System in the EU. The Action Plan foresees that in order to create greater certainty for business the Commission will propose improvements to the current mechanisms to resolve double taxation disputes in the EU.

This public consultation was launched to gather the current views from the public on how double taxation mechanisms could be improved in the EU. It was open from 16 February 2016 to 10 May 2016.

## ***II. Executive Summary:***

### **Section 1: About you:**

- 87 responses were submitted to the public consultation from a broad variety of stakeholders and origin, with most responses having been submitted by industry associations (31%) and from Germany (17%). 9 respondents did not want to have their response published.

### **Section 2: Your opinion**

- The vast majority of respondents considers for the case of double taxation described in the public consultation that within the European Union measures should be in place that ensure that double taxation is removed.
- The vast majority of respondents regard the DTDRM in the EU as not sufficient /just as a starting point with respect to scope, enforceability and efficiency. Within these criteria, efficiency being regarded as the most positive (25% fully sufficient/a good basis, see section 2 below).
- As regards the impact of double taxation, the vast majority of respondents regard double taxation as detrimental to growth, creating barriers and preventing foreign investors from investing in MS as well as driving investments away from MS. Only very few respondents think that double taxation protects the economy of MS.

### **Section 3: The objectives**

- There is broad support for most of the objectives suggested in the consultation. Less support is encountered for safeguarding the financial interest of the Member States. The strongest support is encountered for ensuring timely resolution, a business friendly environment and having access to the mechanism as well as predictability.

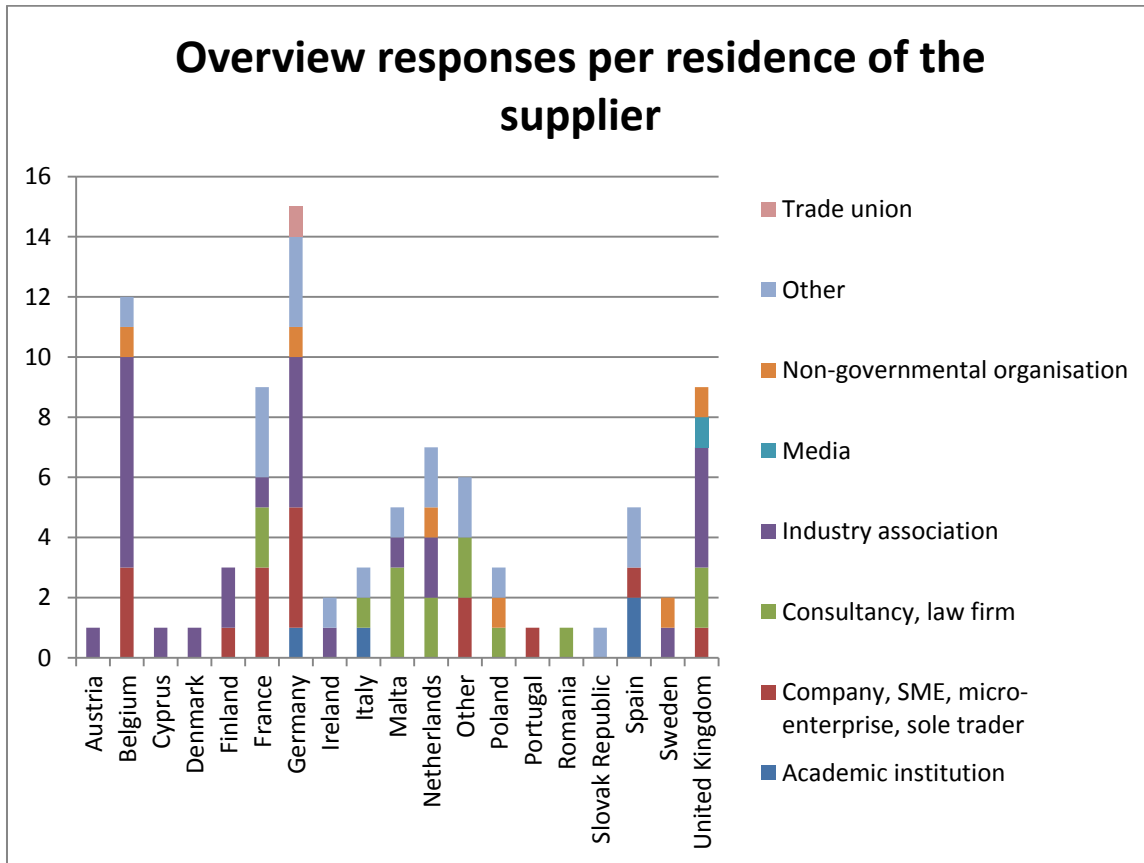
### **Section 4: EU action**

- Respondents generally see a need for taking action. As regards the kind of action, guaranteeing elimination of double taxation, compatibility with international developments and stronger role for the taxpayer received most support.
- There is more support for building EU action on mechanisms already available than for a new comprehensive legal tool. Very few respondents think that the EU should limit itself to encouraging MS to adopt mechanisms in their bilateral relationships.
- As regards the options suggested, the views are less positive for option A i), positive for A ii) and B. C received the most positive views. However, combining the categories "will fully meet the objective" and "will partly meet the objective", the rating is similar.
- On the way forward, half of the respondents regard Option C as fully appropriate for application in other areas of income taxation. Low support is encountered for Options A i) and A ii). For option B most respondents view it as partly appropriate for a broader application

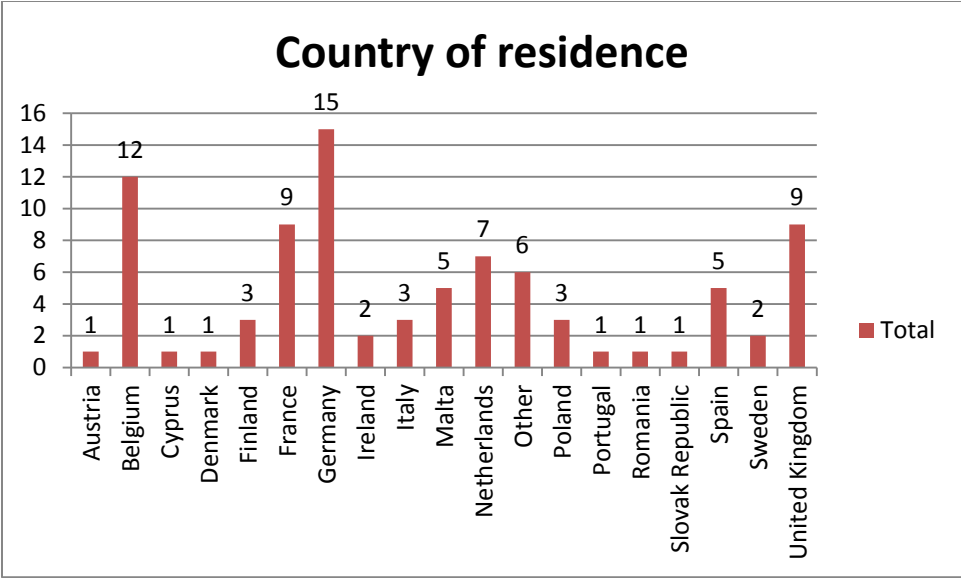
### III. Compilation of responses:

#### Section 1: The respondents

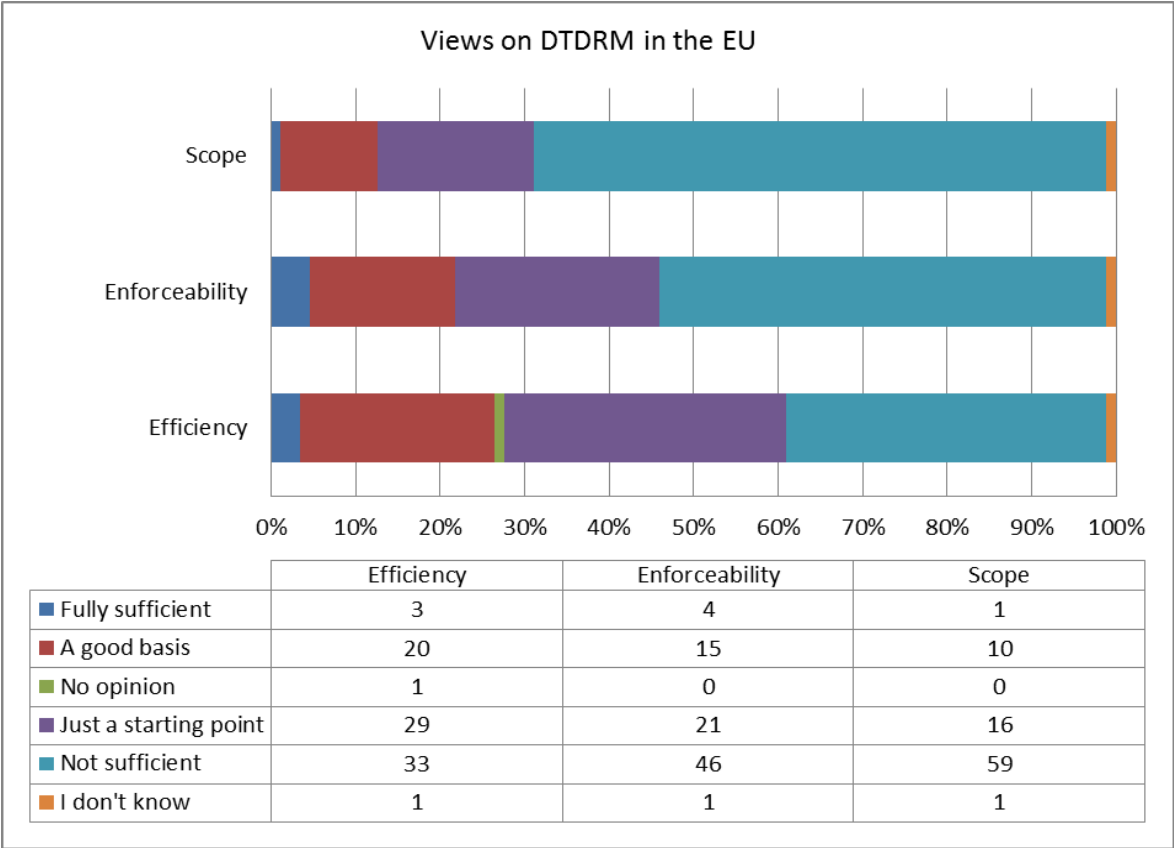
With 27 submissions, most responses come from industry associations. In the other category, which comprises 18 responses, the largest group was tax practitioners or associations representing tax practitioners, which accounted for 6 of these responses.

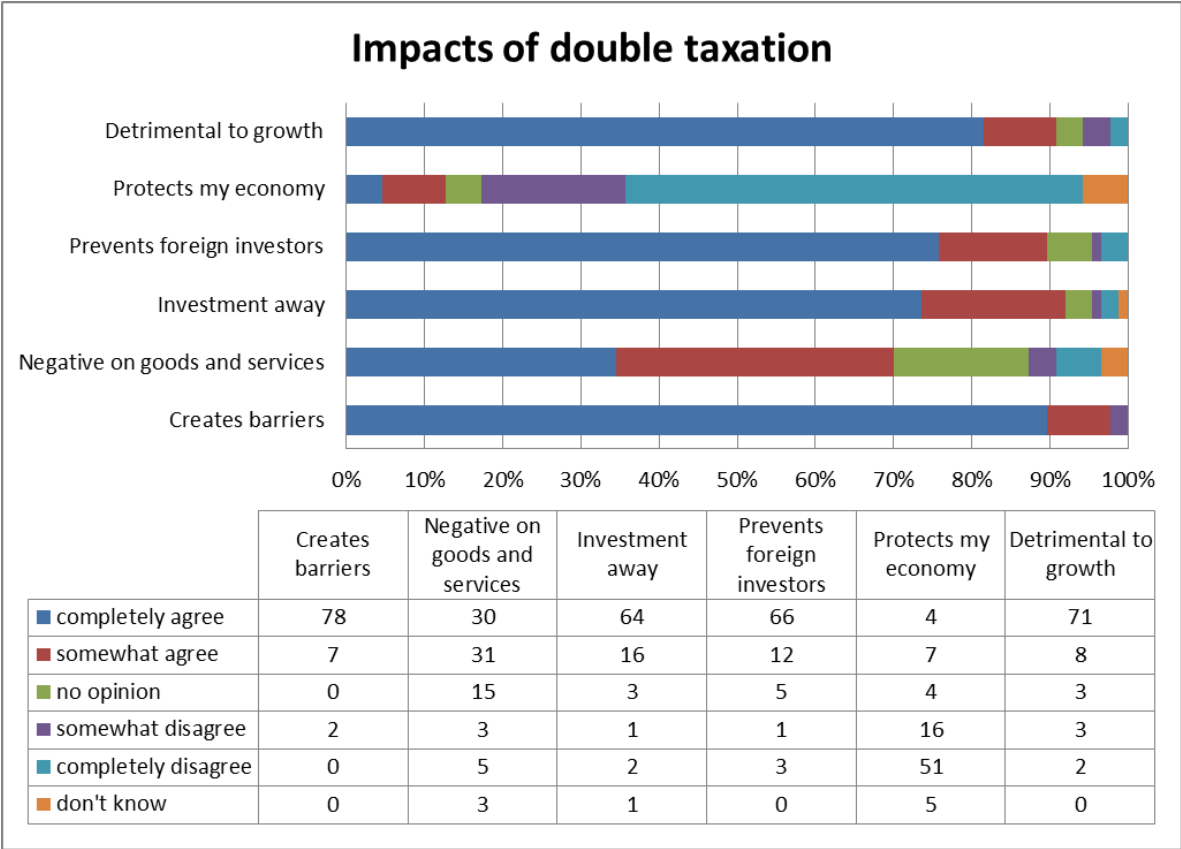


With 15 submissions, Germany has the largest numbers responders to the consultation. The other category includes two respondents from the US and one from Switzerland.



**Section 2: Views on double taxation**





Summary of additional comments

In addition to the impacts of double taxation noted above many respondents cited problems related to the lack of certainty and the complexity of double taxation legislation. This is especially problematic for tax risk management. In particular, the administrative burden, e.g. the need to obtain tax certificates for withholding tax purposes were cited as a particular concern. Cash flow problems for businesses as a result of double taxation were also highlighted. In particular the lack of certainty for business in setting prices between group companies (transfer pricing rules) exacerbate the problems identified for double taxation. Double taxation was seen as distorting competition between businesses operating nationally and those which operate cross-border leading to a decrease in employment and a loss of welfare for the economy as a whole. The Commission's work on the Capital Market's Union to enhance the Internal Market was seen as a useful vehicle for moving forward on the issue of double taxation. However, one respondent noted that double non-taxation was more of a concern, and that existing tax rules favour companies operating internationally to the detriment of domestic companies.

### Comments relating to complexity, lack of certainty and administrative burden

It wastes both taxpayer and government resources on unnecessary disputes having a net nil effect.

Many of the challenges that tax compliant companies face in Romania have to do with cash flows being blocked due to a presumption of non-compliance. As such, companies may have a tendency to accept double taxation rather than spend even more money and many years to try to avoid it [OPAD Tax Consulting].

Authors suffer double/ multiple taxation as it is often impossible to provide the tax certificates necessary to apply for a local tax deduction or, due to application of regular withholding taxes, no deduction can take place [Stowarzyszenie Filmowców Polskich]

As the EC pushes the DSM (through audio-visual (AV) & copyright policy reform), double taxation currently represents an administrative burden for authors and their collective management organisations, discouraging multi-territory licensing solutions and mobility of creators. Authors suffer double/ multiple taxation as it is often impossible to provide the tax certificates necessary to apply for a local tax deduction or, due to application of regular withholding taxes, no deduction can take place [Society of Audio-visual Authors – SAA].

We would urge the Commission and Member States to address the practical difficulties of withholding tax reclaim procedures which can lead to investors suffering the effects of double taxation and pose a barrier to investment. We are supportive of a relief at source system. We note the Commission's work in this area as part of the 2015 Action Plan on Capital Markets Union (CMU). We would be happy to provide any input to this work-stream if helpful [Association for Financial Markets in Europe]

Cases of double taxation are currently on the rise, due to, amongst others, the uncertainty created by interpretation and implementation of international guidelines and the plethora of available information, leading to an increasing number of taxation disputes. This has a negative impact on global growth and reduces cross border trade and investment [International Chamber of Commerce]

Member States often claim that the EU Arbitration Convention is very effective but corporates actually face a lot of hurdles in practice. Some MS (e.g. Italy) make the corporates sign a declaration that they cannot approach the corresponding country under this instrument in case of an increase in profit due to a primary adjustment [Transfer Pricing Associates]

Accounting and cash tax impact as a result of paying taxes in advance of resolution. Otherwise, taxpayers face risks of interest charges and penalties being levied

## Transfer pricing

Enterprises acting in more than one country have relevant administrative expenses in order to comply with tax legislations have 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 procedural duties and the related administrative costs do not necessary involve an effective and consistent reduction of potential tax liabilities connected with double taxation issues involving strong limitations [University of Parma - Dipartimento di Giurisprudenza]

The lack of dispute resolution creates uncertainty for business as no indication on how the situation should be fiscally treated is given. In the TP area, the absence of agreement between States (on the method or on the amount) maintains the taxpayer in total legal insecurity on the way to correctly deal with the transaction in the future. Placing the burden of responsibility and the threat of a future tax adjustment of the company because of State's disagreement is not acceptable [MEDEF (Mouvement des entreprises de France)]

## Other comments

The supposed dangers of double taxation for corporations have been greatly exaggerated to the point where international tax rules have come to facilitate double non-taxation, which distorts competition, damaging domestic enterprises and undermining taxation, to the detriment of growth and jobs [BEPS Monitoring Group]

Double taxation has a negative impact on purchasing power since it ultimately leads to increased price levels [EY]

Double Taxation may also lead to economic distortions between businesses of different size and place of trading [DIE FAMILIENUNTERNEHMER - ASU e.V.].

Double taxation leads to reduced employment and lower Welfare [Confederation of Swedish Enterprise]

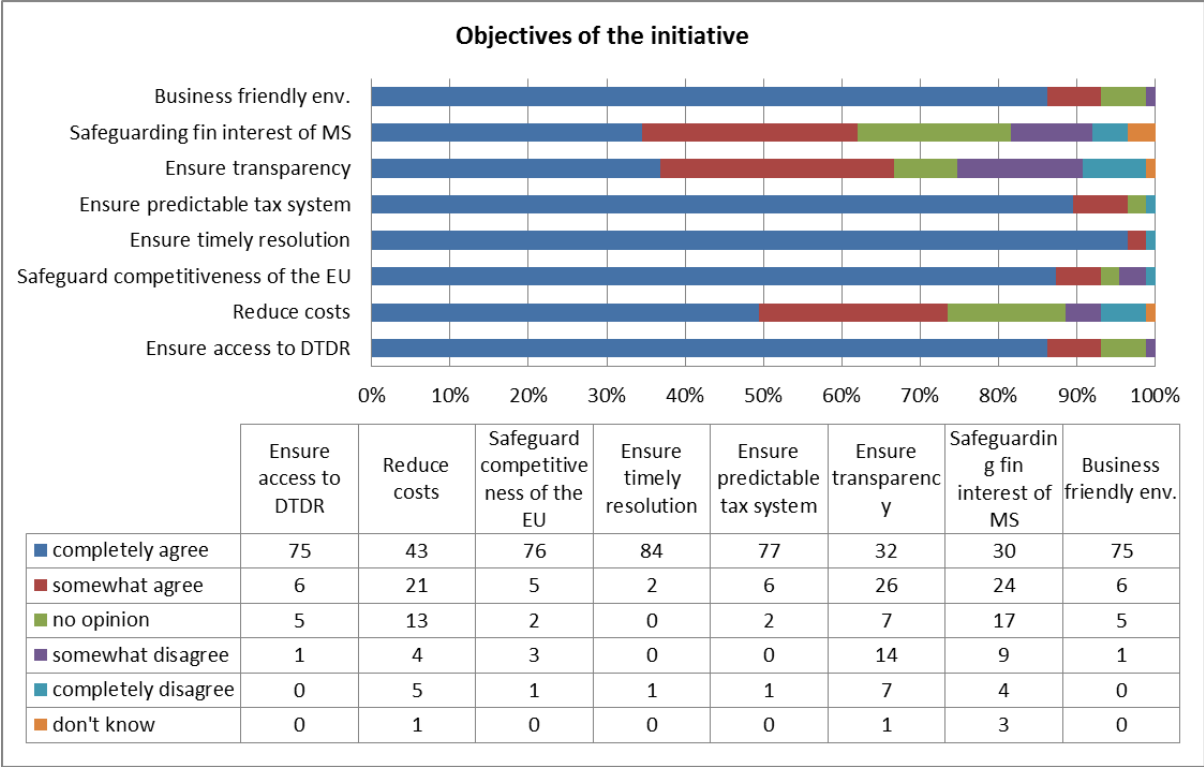
Allows tax competition between MS and create a tax obstacle within the Single Market, since the countries with an efficient system on solving tax conflicts would be in better conditions to compete for international investments [Fernando Serrano Antón]

We are concerned with the impact of double taxation on Risk Management activity. Managing tax risk has always been a point of concern to us. With the implementation of the new measures, we foresee a potential increase of double taxation and on the number of tax disputes. TP related disputes will also most likely increase as well. The current insufficiency of dispute resolution mechanisms is self-evident, and it often acts as a deterrent for our foreign investment decisions [International Tax Committee of the International Association of Financial Executives Institutes – IAFEI].



Double taxation is also detrimental to the competitiveness of multinational companies in the EU [Insurance Europe].

**Section 3: Views on the objectives**



Summary of additional comments

Many respondents noted that whilst they understood the importance of transparency the rights of businesses to maintain commercial confidentiality should be preserved, and that their business interests should not be jeopardised. A couple of respondents noted that the initiative should also take into account residents of third countries which, due to globalisation, may well become a more important feature in the future for business arrangements. Dispute resolution mechanisms were seen as useful for other taxes like VAT, and the work by the Commission on the Common Corporate Consolidated tax base was regarded by some as being able to address the issue of double taxation in the EU. Member States were requested to improve their Mutual Agreements Procedures (MAP), and that taxpayers should have the opportunity to become actively involved in the process. The establishment of a Permanent Arbitration Court, which would develop the standard rules and practice for efficient resolution of tax disputes, was cited by one respondent as a solution. Harmonisation of Double Taxation Treaties was also suggested as a way forward.

Transparency

We can see the benefits of transparency by publishing main parts of the double taxation dispute cases/decisions where the decision relates to a legal interpretation of a treaty matter. This would contribute to a better understanding of the dispute resolution processes. However, it would be crucial to ensure that commercial confidentiality would be preserved when publishing any data publicly [Confederation of British Industry].

Reduction in the number of cross border disputes once a body of cases and decisions is available - provided that confidentiality is maintained for commercially sensitive information when cases and decisions are published. Safeguarding of taxpayer's interest by the suspension of collection of taxes which would result in double taxation, whilst the Member States seek to resolve the issues.

NB: \*Ensuring transparency by publishing main parts of the double taxation dispute cases/decisions": Without having an in-depth understanding or more details of how this would be done in practice, EBIT Members reply here with: "completely disagree". Other objectives: The EU should lead the way toward a world-wide effective double taxation mechanism and could develop a comprehensive legal tool to resolve double taxation disputes: yet the challenges of this should not be underestimated! [European Business Initiative on Taxation (EBIT)]

With respect to above: (i) transparency of dispute cases/decisions should be guided by a norm framework for publication and at same time not create a (publication) barrier to enter the dispute resolution process; (ii) "tax deemed due" appears different from tax due. Hence disagreed [International Chamber of Commerce]

With regard to the publishing of tax cases and decisions, this should only be done on the basis that the identity of the parties involved remains anonymous. Additionally, with regard to improving the collection of tax this should only relate to final agreed tax only and not the disputed amount.

With respect to the publishing of decisions I would agree but only on an anonymous basis due to the need for commercial confidentiality.

### Residents of third countries

Extending agreements to apply in cases where the beneficial owner is resident in a third country. There is a need to update existing treaties on non-double taxation as they do not include modern form of businesses. In practice in different Member States exist different Tax certificates and not all Tax Authorities accept documents from other M.S. there is a need of cooperation between M.S [Stowarzyszenie Filmowców Polskich].

In many cases only EU Member States will be involved, however, situations will arise - potentially increasing in number - which also (in part) involve non-EU Member States.

Preferably in OECD-context a principle is created for the commencement of legal proceedings, i.e. an OECD arbitration convention that States can sign up to. The arbitration must be mandatory and binding on those States that sign up [de Nederlandse Orde van Belastingadviseurs (the Dutch Association of Tax Advisers) (NOB)].

### Investment

Efficiency and low costs for tax authorities, whilst clearly desirable, are not the prime focus of dispute resolution and alleviation of double taxation mechanisms. Consequences for investment, growth and jobs of an uncompetitive, costly and uncertain environment are likely to have an impact on future tax receipts in any event. Transparency is helpful only where the matter relates to legal interpretation and has precedent value. Confidentiality of commercial information must be maintained [Deloitte LLP]

To create jobs by reducing costs to enterprises [EUROCHAMBRES – The Association of European Chambers of Commerce and Industry]

The elimination of double taxation for business transactions promotes and enhances the internal market [Confederation of Swedish Enterprises]

### VAT

Another objective is the harmonisation of the dispute resolution process across all types of taxes – especially with indirect taxes, in line with the VAT Action Plan. Regarding the above responses: - Main elements of double tax decisions should be published anonymously – a precedent for this exists in the area of indirect tax - Safeguarding financial interests of Member States should not be a major objective - this could lead to some Member States choosing to do nothing to save costs and protect their tax base [The Federation of European Accountants].

### CCCTB

Safeguarding competitiveness of EU companies by implementing a swift (less than one-year) and red-tape-free procedure; promote the common consolidated corporate tax base (CCCTB) [Jordi BONABOSCH]

By far the best approach would be to minimise the possibility of conflicts and double taxation by adopting a common consolidated corporate tax base with consolidation [BEPS Monitoring Group].

## Other

Updating existing DTCs to include modern forms of business; • Predictable taxation systems and tax policy in Member States (MS) & the Single Market; • Harmonising rates, required documentation & conditions attached to double taxation relief treaties; • Harmonising implementation & interpretation of existing OECD MTCs e.g. some MS consider CMOs as beneficial owners of royalties & others don't; • Extending agreements to apply in cases where the beneficial owner is resident in a third country [Society of Audiovisual Authors – SAA]

Improving collection is not an issue of the elimination double taxation but relates to recovery of tax. The term 'tax deemed due' is unclear: both tax authorities would consider their taxation correct and tax deemed due. Under the 2015 CoC on the AC suspension of tax collection for cross-border dispute procedures can be obtained under the same conditions as under domestic proceedings. Such suspension should not be linked to domestic rules but generalized and embedded in the text of a multilateral treaty [PwC International on behalf of the Network Member Firms of PwC ("PwC")]

Ensure that in bona fide cases the resolution of the dispute is "interest neutral" for taxpayer [EY]

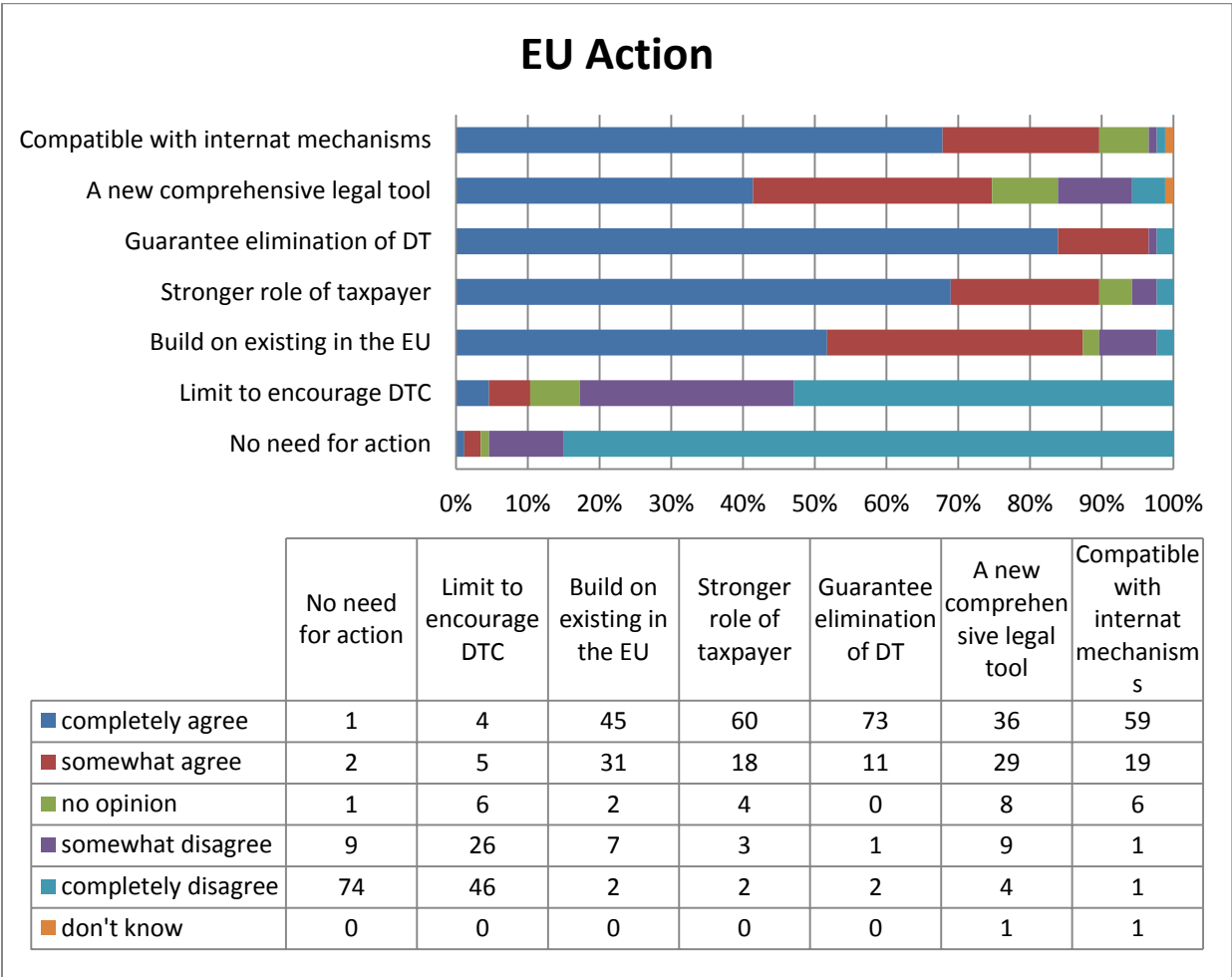
All OECD countries have agreed to improve their MAP regimes on foot of BEPS Action 14 and the main objective of the EU should be to support Member States in this process. This will require an investment in MAP resources so it is difficult to see how reducing the cost of tax administrations would be a feasible objective of the EU. Another objective should be to ensure more taxpayer involvement in MAPs, e.g. updating taxpayers on the progress of MAPs and allowing them to compel arbitration [Irish Tax Institute]

Ensuring taxpayers rights by establishing a Flexible Multi-Tier Dispute Resolution which offers various procedures for various kinds of disputes ("tailor made dispute resolution") and use Mutual Agreement Procedures (MAP) as one of the first steps of the procedure. Involve the taxpayer in the process of MAP and Arbitration.

Enable taxpayers to play an active role in the dispute resolution process (right to initiate the proceedings, submit evidence) - develop a mechanism of fair imposition of penalties that would mitigate the detrimental effect of double taxation on taxpayers - support the establishment of a permanent arbitration court that would develop the standard rules and practice for efficient resolution of tax disputes (see attached CFE Opinion Statement FC 4f/2016 on BEPS Action 14) [CFE (Confédération Fiscale Européenne)].

**Section 4:**

**Section 4.1: Views on the kind of Action:**



Summary

Deterrents were suggested as a way to prevent Member States from benefiting from delaying a favourable resolution. The need to align the work of the Commission with international standards, in particular, the work of the OECD BEPS project for Action 14 Dispute Resolution Mechanisms, was suggested by respondents. The role of the Commission's Joint Transfer Pricing Forum was seen as providing a useful role in monitoring the resolution of double taxation cases. Other suggestions for actions included: Central contact points should exist instead of requiring applicants to deal directly with the tax authorities in both the home country and other countries; quarterly reporting obligation from Member States to European Commission on the type and/or number of disputes; and an escalation mechanism for cases that do not get resolved under the current available dispute resolution mechanisms to be transferred to an independent forum which makes a decision to resolve double taxation.

### Deterrents

Deterrents should be put in place to prevent tax authorities from benefitting from double taxation in cases where delaying a favourable resolution benefits them [OPAD Tax Consulting]

### Dispute resolution

Enhance dispute resolution measures for other non-TP aspects; Ensure any measures' compatibility with BEPS; Encourage Member States to sign up to the OECD's mandatory binding arbitration process [Confederation of British Industry]

The EU should ensure that Member States do not seek to deny access to dispute resolution mechanisms.

### Transfer prices

The EUJTPF's work should be completed by a forum of competent authorities responsible for annually publishing the way double taxation is solved (number of cases, time for cases, countries involved) [MEDEF (Mouvement des entreprises de France)]

### International

The EU should implement a legal tool for dispute resolution which is aligned with international standards but tailored to fit all legal requirements [The Consultative Committee of Accountancy Bodies-Ireland [(CCAB-I)]

EU should play its role not only in the bilateral relationships among Members States but also considering EU treaty and the effect on the fundamental freedom granted also in a multilateral prospective [University of Parma - Dipartimento di Giurisprudenza]

We consider that EU action must work with existing global standards (the OECD BEPS Action 14 recommendations), and should include all EU states joining the mandatory binding arbitration process [Association for Financial Markets in Europe]

### CCCTB

Adopt the Common Consolidated Corporate Tax Base. While corporate taxation continues to rest on the independent entity principle it is unreasonable to expect elimination of economic double taxation [BEPS Monitoring Group]

## Other

Central contact points should exist instead of requiring applicants to deal directly with the tax authorities in both the home country and other countries [Society of Audiovisual Authors – SAA]

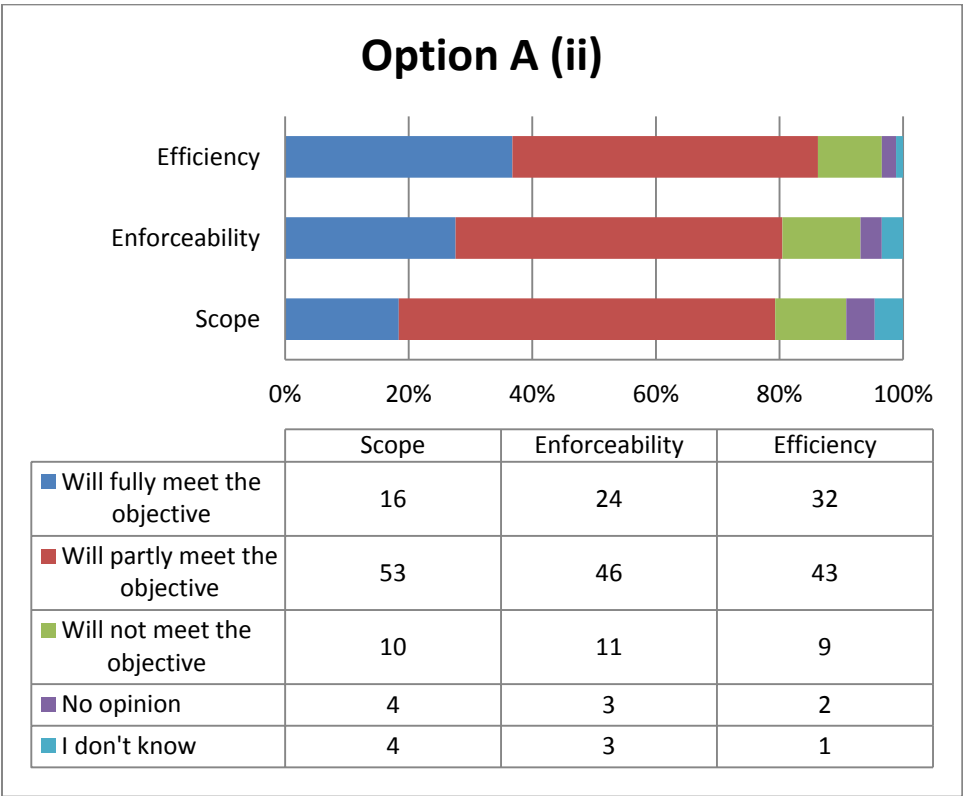
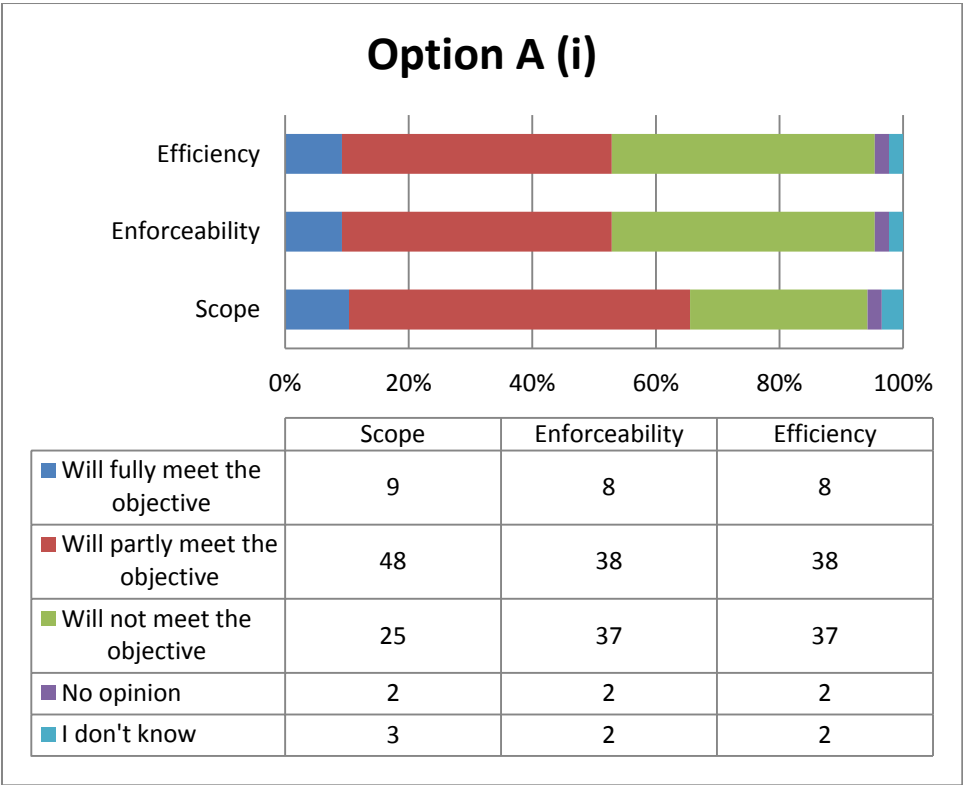
Quarterly reporting obligation from Member States to EC on the type and/or number of disputes [Transfer Pricing Associates]

In order to have a broader scope, the EU Action could consider as well the introduction of MAP and Arbitration in other tax areas in which there is a high rate of conflicts, not only double taxation [Fernando Serrano Antón].

Allow for an escalation mechanism for cases that do not get resolved under the current available dispute resolution mechanisms to an independent forum that makes a decision that resolves double tax

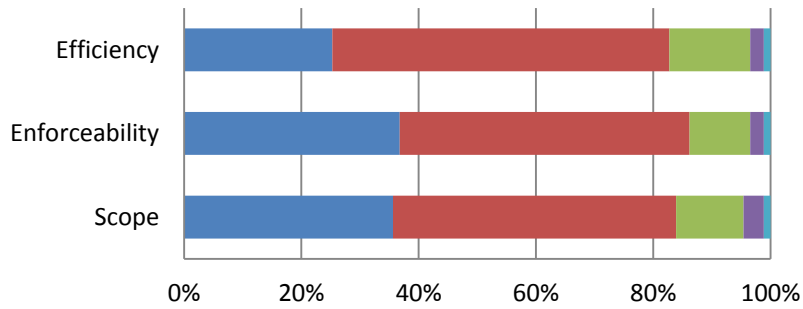
Development of clearing house system between EU Member States with respect to tax collection with taxpayer providing just guarantee for amount relative to rate differential [EY]

**Section 4.2: Views on the options:**



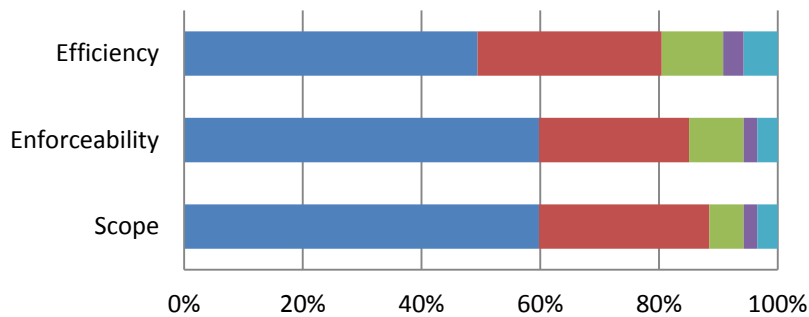


## Option B



	Scope	Enforceability	Efficiency
■ Will fully meet the objective	31	32	22
■ Will partly meet the objective	42	43	50
■ Will not meet the objective	10	9	12
■ No opinion	3	2	2
■ I don't know	1	1	1

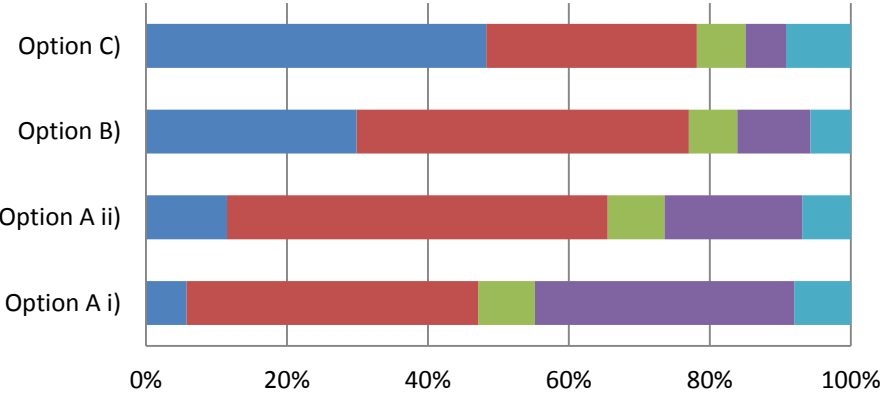
## Option C



	Scope	Enforceability	Efficiency
■ Will fully meet the objective	52	52	43
■ Will partly meet the objective	25	22	27
■ Will not meet the objective	5	8	9
■ No opinion	2	2	3
■ I don't know	3	3	5

**Section 4.3 Views on the way forward**

**Application beyond business**



	Option A i)	Option A ii)	Option B)	Option C)
Fully appropriate	5	10	26	42
Partly appropriate	36	47	41	26
I have no opinion	7	7	6	6
Not appropriate	32	17	9	5
I don't know	7	6	5	8