



Double taxation in the EU (except transfer pricing situations)

1. Permanent establishment

- a) PE issues: Tax administrations are often re qualifying activities of PEs (i.e. commissioner). As case law is not coherent from one country to another, and sometimes contradictory, it can end up in double taxation where amounts are significant.
Ex: France and UK with the Netherlands.

Difference in the tax treatment between PEs and subsidiaries also arise in the EU.

- b) Triangular situations: PEs are not resident according to bilateral tax conventions: the convention signed between the source State and the PE's State cannot be applied and the convention with the parent's State might provide for a higher withholding tax.

Furthermore, even if the PE may, according to a specific clause, benefit from the bilateral tax convention agreed between source and residence countries, the PE's State does not grant a tax credit: therefore, double taxation is not suppressed unless the convention provide for the exemption of withholding tax.

2) Withholding taxes

- a) Inability to benefit from a tax credit or a tax deduction when the taxpayer suffers a loss or when the withholding tax is contrary to the DTT: some countries authorise the carry forward of the tax credit. However, in France, it is not possible because no tax credit is available (the use of the tax credit is only allowed on taxes of the same nature (i.e. corporate tax) and the same year.
Furthermore, some tax authorities (eg. France) refuse to grant a tax credit as well as the right to deduct the foreign tax burden as a general expense.
- b) Withholding taxes are levied on the gross payment in the source state without taking into account the fees incurred in the residence state and whereas the corresponding tax credit is capped at the net income.

Ex: the French « règle du butoir » applicable on many types of revenues.

3) Foreign losses

Impossibility for the parent company to deduct final losses generated by a PE or subsidiary in another MS.

According to Lidl court case, the possibility given by Marks & Spencer case of foreign loss relief has been extended to PEs. However, French tax administration very often questions the definitive aspect of the loss (no possibility of the losses in question being utilised in the Member State of the surrendering company in that accounting period, in any previous accounting period or in future accounting periods).

4) Diverging qualification or interpretation by MS

MS may qualify or interpret differently notions or incomes.

Ex: Capital reductions via securities redemption can be treated as dividends in France and as capital gains in Luxembourg.

5) Business restructuring (BR): exit tax and permanent establishment issues

The change in the way companies operate their businesses globally (and in the EU) raises new tax questions, which were not necessarily anticipated when international law concepts were initially developed. While current policy developments aim at addressing these issues (e.g.. BEPS, EU, OECD work on intangibles ...), it seems uncertain whether these will effectively solve the most pressing concerns with double taxation arising in case of business restructuring carried out within the EU.

The drivers for changes in the way companies operate their businesses globally - and particularly within the EU - have to do with a number of factors: administrative simplification (reducing the number of legal entities), centralization of their operating model (by combining functions at regional or divisional level so as to avoid duplications), matrix reporting and increased global mobility (translating into "virtual" management models), and increased use of technology (digitalisation). This explains the trend observed over the recent years with MNEs setting-up centralised principal/agency structures, for perfectly legitimate business purposes, i.e. matching their legal entity and transfer pricing structure with their business model.

However, it is striking that, depending on whether it operates in the EU as a single entity with branches, or as a group with separate legal entities, an EU-based MNE will or will not suffer from

(or be exposed to risks of) double taxation when implementing and operating a centralized model:

- An EU-based MNE establishing a single entity with branches in various countries for operating a centralised model (e.g. Head-Office as central entrepreneur and local branches as sales agents or contract manufacturers) is not subject to exit tax issues (tax neutrality under EU cross-border merger), nor to PE exposures (local branches ARE de-facto PE's of central head-office). Only relevant question is whether attribution of profits between head-office and branches is at arm's length (based on the OECD Authorized Approach, i.e. functionally separate entities), and potential disputes are to be solved through the EU Arbitration Convention;
- An EU-based MNE implementing and operating a centralised model through separate legal entities in each EU country will be faced with (i) exit tax issues upon conversion into the new model (see a) below), and (ii) permanent establishment exposures on a going-forward basis (see b) below). This will generate double-taxation and high uncertainty regarding the tax treatment applicable to profits generated within the EU.

BR is not covered by the EU cross-border merger directive: the issues of DT resulting from 1) exit tax as mentioned above and 2) the risk of requalification of an entity as a PE remain unsolved. This can lead MNE's to favour a cross-border merger (costly, time consuming, and complex to implement) instead of BR (which is easy to implement and administer), in order to be able to operate their transfer pricing model in accordance with their business model, without undue tax cost and uncertainty, and with full application of the EU Arbitration Convention for resolving remaining potential transfer pricing issues.

a) Exit tax

Some MS have already adopted domestic measures regarding taxation of BR (reorganisation by way of transfer of functions, risks and/or assets) which are subject to taxation on the deemed capital gain attributed to such transfers (Exit Tax). Others probably will follow current work at the OECD level. Knowing that there is no regulation at the EU level to ensure tax neutrality on capital gains (outside the cross-border merger directive) and that exit taxes are not covered by the OECD Model tax convention, we fear the increase of double taxation situations. Indeed, two problems can arise: the country of origin does not provide for a deferral of unrealised capital gains taxation, or the country of arrival does not allow for deduction of the provisions or amortisation of the intangible asset.

Ex: in Germany, when a transfer of activity occurs, with or without a transfer of employee, capital gains are taxed but the other MS does not allow for deduction of added back provisions or amortisation. In France, similar measures were to be introduced as part of the 2014 Finance Bill, but were censored by the Constitutional Court for lack of precision, so it is likely that the French tax authorities will try again next year.

b) PE exposure

Tax authorities tend to focus their audits more and more often on assessing the presence of a permanent establishment of foreign companies operating in their jurisdiction through a local entity (i.e. agency PE, service PE), instead of (or in addition to) challenging transfer pricing arrangements between the domestic agent and foreign principal. This translates into aggressive audit enforcement activities, including the combination of tax inspectors and law enforcement officers to perform on-site visits, and ending-up with application of serious penalties¹ on the top of arbitrary taxation, therefore preventing application of the EU Arbitration Convention. Further, existing case law on this subject (which is still limited as tax controversies on such PE matters result from recent audit challenges) is not coherent from one country to another, and sometimes contradictory². Such PE cases result in double taxation with significant amounts at stake. This leads to a very high uncertainty for taxpayers.

6) Capital allocation

Inadequacy of capital allocation to subsidiaries give rise to tax assessment which is not always compensated by an adjustment in the parent's State. Even in the case of a favourable outcome, there is no legal way to urge the subsidiary's state to waive penalties.

Ex: France (parent) and Germany (subsidiary), and Belgium (parent) and France (subsidiary)

7) CFC rules

CFC rules are not harmonised at the EU level and they do not always include a specific clause preventing from cumulative application within the EU. The CFC rule is applied twice but in case of a tax credit it cannot be taken into account at both levels.

Ex: Parent Company in France, subsidiary in the UK and subs subsidiary in a third country with a preferential tax regime. If the UK applies its domestic CFC rule, France might also apply it. If a corporate tax has been paid in the third country, it will be offset in the UK. However, the gross amount will be re taxed in France without taking into account the corporate tax paid in the UK.

This is especially disadvantageous with regard to the freedom of establishment principle, because if the same parent company owns the first subsidiary in France (instead of the UK), there will be no cascading tax as only one of the French companies will apply the CFC rule.

¹ Because of absence of filing a tax return for the alleged PE.

² Examples of recent PE cases in Europe include Philip Morris in Italy (2002), Zimmer in France (2010), Dell in Norway (2011), Boston Scientific in Italy (2012), Roche Vitamins in Spain (2012) and again Dell in Spain (2012). In many of these cases, the foreign principal deemed to operate a PE in the agent's country, was located in a country where it was subject to taxation at a "normal" tax rate.

8) Cross-border reorganisations

In case of mergers and contributions concerning companies of different Member States, the Merger Directive intends to remove fiscal obstacles to cross-border reorganisations. However, when tax retroactivity is recognised in a country and not in the other, interests according to a loan contract contributed may give rise to double taxation. Nothing is provided so far to ensure neutrality on this specific point.

Ex: Dutch company A makes a contribution to a French company B in June. According to the loan agreement attached to the contribution, Company A has received interests from January to June and has been taxed on these interests. After the contribution, company B, according to the tax retroactive effect, has to repay taxes on these interests from January to the end of the financial year.

9) VAT issues

Double taxation arises when a tax administration considers there is a hidden PE which is due to pay VAT.

Ex: A foreign company provides services to a French customer who self-assesses VAT. However, if the tax administration considers that the foreign company has a PE in France, the transaction is considered to be domestic and not cross-border. The “PE” has to re-pay the VAT (which is paid twice) without the possibility to deduct it (because it cannot be invoiced to the customer).

Conclusion

Double taxation outside transfer pricing situations is still an issue within the EU.

It is the result of sovereignty of MS in the direct tax matters and may take different forms (contradictory interpretations, introduction of domestic legislation increasing double taxation risks, failure to take account of the other MS’s position...).

European companies are concerned by the fact that tax treaties do not solve all double taxation problems that arise in practice -they do not cover all taxes, they do not fully remove double taxation and they are inadequate for eliminating double taxation where more than two Member States are involved (i.e., triangular and multilateral situations) - and by the limited scope of the arbitration convention.

Even though the multiplicity of the situations might call for differentiated answers, an efficient first step could be the introduction of the option 3 mentioned by the Platform (directive) with the reservations that are mentioned in our answers to the questionnaire on arbitration.

Above all, we call for more neutrality for any transaction, operation, restructuring that occurs within the EU: as mentioned previously, there still are situations (difference of treatment between PE and Subsidiary, business restructuring, application of CFC rules) where freedom of establishment is challenged by the lack of uniformed European regulation and could be solved.

Moreover, we fear that due to current modification of international tax standards or principles, new situations of double taxation will occur in the future. For example, according to the forthcoming modifications focusing on hybrids (parent-subsidiary directive and limitation of interests deduction at a national level), the fact that an EU company A is low taxed might prevent the deductibility of interest received from company B or the application of the directive to dividends received by company C. If B and C is the same person, it might be even worse. From a possible double non taxation, we end up with a double taxation.

We therefore give our full support to actions that will be taken in this regard.



MEDEF's comments to the Platform on Remaining cases of double taxation in the single market: means to foster arbitration

MEDEF is pleased to respond to the Platform request to send comments on means to foster arbitration.

We consider the issue of double taxation paramount in the EU area -which is originally meant to act as a Single Market, i.e. without economic borders-. Therefore, we acknowledge the importance given to dispute resolution and the fact that this issue is raised by the Platform. We strongly support this initiative and think it is the right time to deal with it, as double taxation and double non taxation are the two different sides of the same coin.

1) Do Platform members consider that the problem is sufficiently important for Community action?

Although we acknowledge the previous achievements and the work that have been done so far by the Commission, especially through public consultations, there are remaining cases or situations of double taxation within the EU:

1. Some are related to the tax treaties :
 - Absence of tax treaties (ex: Fr-Dk) : uncoordinated and non-harmonised implementation of States' tax policies
 - Different treatments between companies of two Member States ("MS") according to specific tax treaties clauses: LOB or most favoured nation clause
 - Absence of arbitration clause leading to a binding solution
2. Some are due to bad transposition of EU-rules
 - Anti-abuse provision leading to curb EU companies to benefit from the directives because of third countries' ownership
 - Diverging views and lack of common definition (ex: "beneficial owner")
 - Existence of a more binding instrument than the one imposed by the directive (ex: parent subsidiary)

Knowing that disputes are more and more frequent, we reiterate our support to this initiative especially as it will provide a solution for non-TP issues.

2) Which is the preferred option of the Platform members³? Do Platform members have a strong position supporting a particular action? Why?

We are not in favour of option 1 which would not solve the issue, and we do not support options 4 and 5 which would interfere in MS' tax policies, as rightly pointed out by the Commission.

Although seducing, option 2 will probably be time-consuming as it implies the renegotiation of all double tax treaties within the EU (300 DTT). However, it could be considered as a good option in the long term.

We then support option 3 as the most effective solution to tackle dispute resolution for all types of double taxation issues.

However, two important questions should be taken into consideration:

1. What, according to the Platform, would boost the adoption of a legislative tool such as a directive knowing that it requires the unanimity of the MS?
2. (if it were designed as the current arbitration system) How can the arbitration procedure be improved in order to prevent existing problems that companies encounter when using Arbitration Convention? In other words, why has it not worked as expected so far?

We then suggest including in the forthcoming tool the following elements:

1. Procedure
 - When a mutual agreement procedure has been initiated, limitation terms should be systematically suspended
 - Annual update should be done by the tax authorities to the taxpayer
 - Knowing that the absence of binding deadlines (possible postponement of the starting point of the two-year period) is one of the main issue : impose binding deadlines in general and also for the redaction of position papers
 - No answer from a MS should be considered as an approval
2. Commission
 - To ensure impartiality : no delegates or representatives of the concerned MS should be involved in the commission

³ *Option 1 – Not taking any action*

Option 2 - Recommend the MS to renegotiate their DTCs in order to include an arbitration clause and thereby ensure that MAPs lead to a binding solution

Option 3 – Propose EU legislation – a directive - which would provide for an arbitration clause with the aim to be solving disputes where MS cannot agree on the application of DTCs

Option 4 - Propose EU legislation to oblige the residence State to eliminate international double taxation through exemption or credit where such obligation does not arise from the applicable DTC or the unilateral measures

Option 5 - Propose EU legislation which should distribute taxing rights between the source and residence States and eliminate double taxation in the residence State where taxing rights are shared.

- In case of failure from MS to name an arbiter, this could be compensated by a specific authority (EUCJ?)
 - Possibility for the taxpayer to present its case in front of the commission
3. Access to the arbitration procedure
- Access should only be limited in case of tax fraud (and not because of penalties whatever their qualification, which are dealt directly by the MS i.e. it is a domestic issue. Moreover, penalties are sometimes used as means of pressure on the tax payer)
 - The arbitration should be possible when the case involves not only MS but also a third country
4. Outcome of the arbitrage
- Ensure that the directive would provide for a binding solution
 - If, at the end of the procedure, the tax due is reallocated between the MS and one of them asks for late payment interests, the other one should pay default interests (ex : one MS claims the existence of a deemed PE and the payment of the corporate income relating to it)
 - Obligation to give reasons for the decision as well as their publication so as to ensure coordinated approach throughout the EU

3) Platform members are requested to submit any further quantitative information on double taxation cases (other than those on transfer pricing)

Please see our document on DT in the EU.

MEDEF's comments to the Platform on the Draft Discussion Paper on the "Tax Havens" Recommendation

Aggressive tax planning in general can be described as the practice whereby tax payers exploit loopholes of a single tax system or mismatches in the interaction between two or more tax systems via complex and/or artificial arrangements to reduce their tax liability.

The Recommendation essentially has three elements:

- i. It contains the criteria for identifying 'tax havens' by listing the minimum standards that should be applied by all third countries.*
- ii. It recommends Member States to identify third countries that do not comply with these standards and to publicly list these jurisdictions (blacklisting).*
- iii. It contains measures that Member States are recommended to take against non-compliant third countries and in favour of compliant third countries.*

Its aim is to curb the lack of policy and regulatory coordination between Member States and third countries that has led the Commission to come forward with the Tax Havens Recommendation.

Before answering the questions, it would be necessary to define what tax heaven and aggressive tax planning are. As far as we know, there is no common approach on these two topics, even within the EU.

Furthermore, there is still no clear line between acceptable and unacceptable tax planning.

The discussion paper states that "aggressive tax planning" can be described by the exploitation of loopholes or mismatches between countries. Those mismatches, as well as incentives regimes, are the result of unaligned tax policy sovereignty; they are not per se illegal.

As we understand the issue, transparency and exchange of information is probably more a question for the Governments themselves.

THE CRITERIA FOR IDENTIFYING 'TAX HAVENS'

The criteria used in the Recommendation are based on the EU principles of good governance in tax matters: transparency, exchange of information and fair tax competition.

- 1) Do the Platform members agree that the work of the Global Forum should be used for assessing the Transparency and Exchange of Information criteria under the Recommendation?**
- 2) Do the Platform members foresee practical or administrative difficulties in applying this approach in practice?**
- 3) Do the Platform members support the use of the Code of Conduct criteria and existing Code assessments as a benchmark for the purpose of applying the fair tax competition criterion of the Recommendation?**

In general, existing standards and internationally-accepted notions should be used to avoid as much as possible the introduction of new concepts or regulations.

However, the Code of Conduct and the Global Forum neither have the same scope nor the same issue. Not all EU Member States (“MS”) are members of the OECD. Therefore, we think it possible to adopt the OECD standards at the EU level only if the OECD’s stigmatised countries are also recognised as such by MS.

Alternative listing criteria?

- 4) Do Platform members consider the intra-EU tax standards and regulations important in relation to the promotion of tax standards and regulations towards third countries?**
- 5) Do Platform members consider there to be a need to review internal EU standards with a view to raising the bar in the context of recent international developments?**

From our perspective, asking third countries to apply the same standards as we do in the EU area is only possible if and when all EU MS apply these standards. We know that although agreeing on the standards, MS do not always have the same definition, concepts and sanctions. For example, concerning black lists there is no harmonisation between MS.

We know that the lack of coordinated approach in this area alters the neutrality between MS. A good starting point could be to select the lowest common denominator.

This could be efficient for a common approach vis-a-vis third countries which do not respect bilateral tax treaties.

BLACKLISTING

- 6) Do Platform members agree on the need for a consistent listing process within the EU?**
- 7) What is the Platform members’ view on how such consistency could best be achieved?**

A list with the lowest common denominator as criteria would probably be acceptable for all MS.

However, if a common blacklist exists, does it enable the EU Commission to negotiate tax treaties? Does that mean a delegation of power from MS to the Commission in that area for anti-abuse regulation?

(OTHER) MEASURES TO BE TAKEN BY MEMBER STATES AGAINST 'TAX HAVENS'(CF N°4 TO 6 OF THE RECOMMANDATION)

- 8) Do Platform members agree on the need for consistency amongst Member States in applying the measures from the Recommendation?**
- 9) Do Platform members believe that a form of coordination would be needed with respect to the positive measures (assistance and secondment of personnel)?**
- 10) What is the Platform members' view on how such consistency could best be achieved?**

Consistency between MS is an objective always pursued by business. Concerning the positive measures, it is probably for the MS to take initiatives according to their material and human resources which could differ a lot from one country to another.



M Heinz Zourek
Director General
DG TAXUD
Chair of the Platform on Good Governance
European Commission

CC: M. Philip Kermode
M. Thomas Neale

February 3rd, 2014

Dear M. Zourek,

MEDEF welcomes the initiative taken by the Commission of creating a Platform for tax good governance and double taxation and the opportunity to be part of it. We particularly appreciate this initiative taken by the Commission to promote constructive and transparent interaction between Governments, civil society, practitioners and business.

As a business representative, we fully support the objectives to promote good governance in tax matters, tackle tax fraud and address double taxation issues: a coordinated approach should ensure effectiveness and a level playing field for all stakeholders. In particular, we are committed to ensuring the removal of any obstacles which could hinder investments, growth and jobs.

We are pleased to give our comments on the following issues: draft program of the Platform, tax heaven recommendation, means to foster arbitration and double taxation outside transfer pricing area.

We hope our contribution will give you a clearer insight into our expectations and will be pleased to answer any questions you may have regarding these comments.

Yours sincerely,

Vanessa de Saint-Blanquat

We agree with the items listed in the draft work program that was published on September the 30th:

1. **Recommendation to encourage third countries to apply minimum standards of good governance in tax matters:** We agree on the principle especially as it will allow fair tax competition. *Please see our answers to the questionnaire on tax heavens.*

2. **Recommendation on aggressive tax planning :**

We would like to express our concern on the absence of a common definition of what an abuse is and by what is meant exactly by “lack of economic substance” or “essential purpose of avoiding taxation”: does that mean that a good tax planning i.e. option to benefit from an incentive instead of choosing the most expensive alternative would be objectionable?

Moreover, we would like to draw to your attention the recent decision (29.12.2013) of the French Constitutional Court rejecting the French general anti-abuse rule contained in the 2014 draft budget as being not compliant with the French Constitution. It intended to extend the scope of the French GAAR to transactions that are “*principally*” tax driven, whereas the current wording of the law refers to “*exclusively*” tax driven transactions.

The unconstitutionality of this proposal was raised on different grounds:

- excessive lack of legal certainty for taxpayers and especially risk of arbitrary application of the law by tax administration
- lack of accessibility and comprehensibility of the law : the project was considered to be unclear and ambiguous
- too broad definition compared to the corresponding 80% penalty

The notion of “essential purpose of avoiding taxation” should then take this decision into consideration for the definition of “essential” (as opposed to principally) and its adequacy with domestic sanctions.

In the same way, we are concerned by the definition of “aggressive tax planning” given in the document ***DOC: Platform/005/2014/E*** . According to it, we understand that an EU favourable tax regime giving a tax benefit is able to be considered as aggressive. This only focuses on the consequences and does not take into account the situation itself.

Ex: an EU company creates a R&D centre in France to benefit from French tax regime (“*crédit d’impôt recherche*”). It is a significant tax benefit which is not reflected in the business risk. However, it is not aggressive tax planning. A tax advantage should not be mixed with an artificial scheme. Otherwise, every MS that uses tax as an economic or political tool to favour employments and growth will lose this opportunity.

3. **Other issues :**

a. **Double taxation and ways to promote arbitration :**

- i. Double taxation: This is still an issue within the EU. *Please see our comments enclosed.*
 - ii. Arbitration: Arbitration is typically an area where the EU can lead. However, there are remaining difficulties. *Please see our answers to the questionnaire.*
 - b. **EU tax Payer's Code:** MEDEF is very interested in this issue and already had the opportunity to exchange with the Commission on it. *Please see our comments enclosed (in French).*
 - c. **MNE's transparency:** What is meant by transparency should be clearly defined (objectives, content using data already available and useful ...) and evaluated (feasibility). Publication of sensitive information should be prohibited.

4. **Effects of EU tax policy on developing countries**

- 5. **BEPS:** Given the worldwide impact and scope of the project, coordination between EU and OCDE work is necessary to ensure a common understanding of the statement, objectives and solutions.

Projet de Charte européenne

Droits du contribuable

Tendances générales :

- Rapprochement des contrôles fiscalité directe et indirecte
- Travaux Forum et directives
- Transparence et RSE (responsabilité équivaut à honnêteté)

1.	Le droit d'être informé, assisté et entendu
	<p>a) <i>Etre prévenu suffisamment à l'avance et avoir le temps nécessaire pour préparer la venue des vérificateurs (quand un délai est prévu il est de 3 à 45 jours selon les EM) : proposer 30 jours min. (hors procédure spécifique anti-fraude)</i></p> <ul style="list-style-type: none">• Permettre à l'entreprise de préparer matériellement la venue des vérificateurs (ex : si viennent pdt la clôture, les salles de réunion sont prises par les CaC pdt 4 mois)• CFCL : préparer des environnements de tests
	<p>b) <i>Informé le contribuable sur les informations demandées ou transmises à/ par l'autre administration ou d'autres organismes</i></p> <ul style="list-style-type: none">• Devrait être facilité par les nouvelles directives « assistance au recouvrement » (16 mars 2010) et coopération administrative (15 février 2011) qui prévoient échange d'information dans le cadre de la lutte contre la fraude et pour augmenter le taux de recouvrement des créances fiscales entre EM (actuellement 5% !)• Même processus : standard minimum aligné sur les standards internationaux (OCDE)• Promotion de l'échange spontané d'information• But : développer la coopération directe des administrations fiscales sans rechercher une harmonisation totale• Offre aux contribuables des garanties car informés des obligations fiscales dans les autres EM et des poursuites qui y sont engagées• Principe du traitement équivalent
	<p>c) <i>Informé le contribuable de l'origine et de la teneur des informations qui lui sont opposées lors d'un redressement et les lui communiquer sur demande</i></p> <ul style="list-style-type: none">• Inciter à une transparence réciproque : la pratique du comparable secret a existé mais ne devrait plus avoir lieu
	<p>d) <i>Conserver la discussion entre la proposition de rectification et le contentieux, notamment dans le cadre du recours hiérarchique</i></p> <ul style="list-style-type: none">• La plupart des administrations des EM pratiquent le contrôle sur place donc

	<p>maintien ou mise en place d'un débat oral ne devrait pas poser de difficultés</p> <ul style="list-style-type: none"> • En Italie, Suède par ex, il n'est pas possible d'avoir un échange équivalent au recours hiérarchique après l'émission de l'équivalent de proposition de rectification (mais qui est définitif dans les autres EM)
2.	Le droit d'appel
	<p><i>a) Pas d'application systématique de pénalités qui dénie l'accès à la procédure amiable et à l'arbitrage (cf. Forum UE)</i></p> <ul style="list-style-type: none"> • Acté dans le code de conduite dans le cas de pénalités graves uniquement : mais notion de pénalités graves non définie
3.	Le droit de ne pas payer plus que le montant exact de la taxe
	<p><i>a) En cas de défaillance de la ou des administrations, résolution de la double imposition en accord avec l'Etat du pays de l'entité vérifiée ou directement auprès de l'administration de l'autre Etat (ex : ajustements corrélatifs)</i></p>
	<p><i>b) En cas d'erreur sur la déclaration - à la hausse ou à la baisse-, possibilité de procéder à une modification après la date légale du dépôt sans pénalités (11 pays sur 12 l'acceptent avec intérêts de retard le plus souvent)</i></p> <ul style="list-style-type: none"> • Quitte à imposer à un délai...
4.	Le droit à la sécurité
	<p><i>a) Correction symétrique étendue aux périodes ultérieures que ce soit en faveur ou en défaveur du contribuable</i></p> <ul style="list-style-type: none"> • Afin d'éviter les réclamations contentieuses qui impose un décalage de trésorerie et enclenche éventuellement un nouveau contrôle
	<p><i>b) Toute position prise lors d'un contrôle par l'administration, même sans le formalisme d'un rescrit, lui est opposable lors des contrôles ultérieurs, toutes choses étant égales par ailleurs (5 pays sur 7 l'acceptent déjà, parfois sous réserve de bonne foi et parfois c'est inscrit dans le rapport de vérification)</i></p> <ul style="list-style-type: none"> • Afin d'éviter de recommencer les vérifications sur des points de fiscalité récurrente ou déjà contrôlés et approuvés par l'administration • Se focaliser sur les éléments qui nécessitent un débat oral et contradictoire • Eviter de perdre du temps sur les points qui n'en sont pas (intérêt des 2 parties) • A. L 80 B du LPF le permet si prise de position formelle de l'administration : ex : administration a déjà expressément permis d'appliquer un taux réduit de TVA au même produits ou position rendue suite à réclamation contentieuse ou décisions de dégrèvement d'office motivées MAIS au contraire n'est pas formelle : l'absence de mise en recouvrement des rappels de même nature au titre d'années antérieures ou l'absence de redressement pour la même charge à la clôture d'un exercice précédent ou l'abandon non motivé de redressements envisagés ou les prises de position verbale

	<p>c) <i>Impossibilité d'avoir un contrôle sur un exercice déjà vérifié, pour les mêmes impôts (seuls les PB l'appliquent de façon formelle; mais en pratique, les autres pays revérifient uniquement dans des cas rares, type fraude)</i></p> <ul style="list-style-type: none"> • Formaliser la pratique • Eviter un double check inutile
	<p>d) <i>Formaliser par écrit les éléments non redressés</i></p> <ul style="list-style-type: none"> • En complément du point b) : permet au contribuable d'assurer un suivi de son dossier (entreprise est immuable alors que le vérificateur change)
5.	Le droit à la vie privée
6.	Le droit à la confidentialité et au secret