

Paris, le 9 mai 2016

Madame, Monsieur,

La Fédération Bancaire Française (FBF), organisme professionnel regroupant l'ensemble des établissements de crédit en France, est heureuse de l'opportunité qui lui est offerte de présenter ses commentaires dans le cadre de la consultation organisée par la Commission européenne sur l'amélioration des mécanismes de règlement des différends en matière de double imposition.

Notre contribution présente les résultats d'un travail de synthèse des cas de double imposition rencontrés par les établissements bancaires membres de notre fédération professionnelle. Nous avons souhaité mettre en avant un cas spécifique concernant la dotation en capital des succursales bancaires au sein de l'Union européenne dont nous exposons la problématique ci-après. Celle-ci devrait à notre sens trouver une résolution dans le cadre européen.

Nous avons également souhaité évoquer un cas de double imposition résultant de l'interprétation juridique divergente, par deux Etats membres, d'un même flux.

Nous avons, par ailleurs, répondu au questionnaire soumis par la Commission Européenne.

.../...

Commission européenne
Direction Générale Fiscalité et Union douanière
Unité D2 – Politique et coopération en matière de fiscalité directe
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B-1049 Bruxelles
Belgique

Nous restons à votre disposition pour tout renseignement complémentaire dont vous auriez besoin. Par ailleurs, la FBF se tient prête à travailler plus avant avec vos services sur ce sujet de la double imposition au sein de l'Union européenne. A cet effet, n'hésitez pas à me contacter (téléphone + 33 1 48 00 50 73 / email : bleporcq@fbf.fr) ou Tania Saulnier, département Fiscalité (téléphone + 33 1 48 00 50 74 / email : tsaulnier@fbf.fr) pour tout complément d'information.

Nous vous prions d'agréer, Madame, Monsieur, l'expression de nos salutations distinguées.



Blandine LEPORCQ
Directrice du département fiscalité

Annexe : note concernant les difficultés de résolution de certaines problématiques de double imposition rencontrées

1- Cas de double imposition liés à la dotation en capital des succursales bancaires au sein de l'Union européenne

Comme nous avons déjà eu l'occasion de l'évoquer dans notre contribution à la consultation de la Commission européenne de 2010 sur les cas concrets de doubles impositions, l'obligation imposée par certaines administrations fiscales d'Etats Membres de l'Union européenne (UE) d'allouer une forme de dotation en capital des succursales de banques, crée des cas de doubles impositions. Ces doubles impositions résultent de traitements divergents entre l'Etat de résidence du siège et l'Etat d'implantation de la succursale.

Nous avons notamment indiqué que dans la mesure où l'OCDE admettait plusieurs méthodes de calcul des dotations des succursales sans donner de précisions sur les modalités d'application, les Etats pouvaient les interpréter de manière très différente ce qui pouvait conduire à de multiples cas de double imposition.

Nous précisons alors que, dans de nombreux cas, les établissements bancaires concernés avaient préféré la voie de la transaction. Toutefois, l'administration fiscale française a été saisie de plusieurs cas de double imposition en cours d'instruction (procédures amiables prévues par la convention d'arbitrage européenne), notamment avec l'Italie et l'Allemagne.

Pour rappel, la problématique de double imposition naît de ce que, conformément à la réglementation européenne bancaire¹, les banques de l'UE ne sont soumises à aucune obligation de dotation en capital de leurs succursales qu'elles ouvrent dans les différents Etats de l'UE. Les banques sont donc libres de financer leurs succursales par voie d'endettement ou allocation de capital.

Ainsi, lorsque les règles fiscales internes appliquées par les Etats membres, dans lesquels les succursales bancaires sont établies et financées par voie d'endettement par les sièges français, exigent une dotation en capital minimale, les administrations fiscales de ces Etats tendent à remettre en cause le niveau des financements par emprunt qu'elles jugent excessifs selon leurs propres critères. Elles rejettent alors la déductibilité de tout ou partie des intérêts de l'instrument de dette servis par la succursale locale à son siège français, d'où une double imposition du fait de l'imposition en France des intérêts reçus par le siège.

Pour information, le cas inverse s'est également présenté en France s'agissant des sièges établis dans un autre pays que la France : en effet, de nombreuses succursales françaises de banques de l'UE fonctionnaient sans dotation permanente de fonds propres et sont financées majoritairement par des prêts octroyés par leurs sièges. L'administration fiscale française considérait que ces succursales étaient sous-capitalisées lorsqu'elles ne disposaient pas de

¹ Aucune obligation réglementaire communautaire ne pèse sur les succursales de banques de l'Union européenne en matière de capitalisation : l'article 16 de la directive 2006/48/CE dispose qu'aucun capital de dotation ne peut être exigé par les Etats membres d'accueil en ce qui concerne les succursales d'établissements de crédit agréés dans d'autres Etats membres ; la raison en est que le calcul des ratios de risque s'effectue au niveau du siège. Il n'y a ainsi au niveau européen aucune disposition réglementaire spécifique encadrant le financement et la capitalisation des succursales françaises de banques européennes

capitaux propres d'un montant comparable à celui exigé d'un établissement de crédit français exerçant les mêmes activités. L'administration fiscale refusait alors la déduction des intérêts générés par la prétendue sous-capitalisation. Ce sont les compléments d'impôt en résultant qui ont été contestés devant le juge français : le Conseil d'Etat a désavoué la position de l'administration fiscale dans plusieurs arrêts du Conseil d'Etat dans une série d'arrêts rendus le 11 avril 2014 (CE, n° 346687 et 349015, Banca di Roma SpA ; CE, n° 344990, *Bayerische Hypo und Vereinsbank AG* ; CE, n° 359640, *Caixa Geral de Depositos*).

Prise de manière globale, la question de la sous-capitalisation des succursales bancaires au sein de l'UE se pose avec une particulière acuité dans la mesure où les succursales de banques agréées dans l'Union européenne ne sont pas soumises aux obligations en matière de fonds propres dans leur Etat d'implantation.

Or, il n'existe pas d'approche fiscale commune des Etats Membres sur ce sujet, d'où une situation récurrente de risque de double imposition. Plusieurs cas ont été rencontrés par nos membres ces dernières années mais leur mode de résolution n'a pas été nécessairement identique (« transaction », contentieux ou recours à la procédure amiable) d'où une difficulté pour apporter des chiffres sur les enjeux.

Il faut toutefois noter les rapports de l'OCDE de 2010 sur l'attribution des bénéfices aux établissements stables en date du 22 juillet 2010 (Partie II sur les établissements stables des banques) : l'OCDE retient qu'il serait souhaitable que « *l'établissement stable dispose du même montant de capital libre qu'une entreprise indépendante exerçant des activités identiques ou analogues dans des conditions identiques ou analogues dans le pays d'accueil de l'établissement stable, en effectuant une analyse de comparabilité de ces entreprises indépendantes* ». Or, le capital « libre » est défini comme le financement ne donnant pas lieu à un rendement déductible de l'impôt.

À cet égard, il convient de noter que des tribunaux d'autres États européens, amenés à se prononcer sur l'application de leurs dispositifs internes de sous-capitalisation à des succursales de banques européennes, ont validé celle-ci et limité, corrélativement, la déduction des intérêts servis par ces succursales. Ils se sont, ainsi, conformés à l'approche de l'OCDE.

Sur ce type de sujets, dont les enjeux financiers peuvent être significatifs en fonction de la pratique des administrations fiscales de certains Etats, il nous semble impératif qu'une solution harmonisée soit adoptée au sein de l'UE. Il n'est en effet pas souhaitable que des contribuables soient contraints à mener des actions devant les tribunaux eu égard à des situations de doubles impositions qui résultent du refus des Etats Membres de l'UE à se mettre d'accord sur une règle unique.

Il est donc indispensable qu'une règle commune sur la dotation en capital des succursales bancaires soit arrêtée et appliquée par l'ensemble des Etats membres de l'Union Européenne permettant ainsi au secteur bancaire d'avoir une règle fiscale unique évitant toute situation de double imposition.

2- Litiges relatif à la qualification des revenus : cas des commissions de garantie

Dans notre contribution à la consultation de la Commission européenne de 2010 précité, nous avons fait état de cas de doubles impositions résultant de différences de qualification de revenus en application de certaines conventions fiscales (nous avons mentionné le cas de rémunérations de prestations informatiques, qualifiées par la Grèce de redevances au sens de la convention fiscale précitée, et considérées comme étant le revenu d'une prestation de services - Bénéfices des Entreprises ou Autres revenus - par la France : du fait de cette différence de qualification, la Grèce opérait une retenue à la source sur le flux émanant de la Grèce tandis que la France refusait d'accorder l'imputation du crédit d'impôt correspondant au motif que le revenu en question n'était pas une redevance au sens conventionnel et n'aurait pas dû donner lieu à une retenue à la source en Grèce).

Des cas de doubles impositions similaires sont toujours à déplorer : il en est ainsi sur les commissions de garantie qui sont analysées par certains états membres comme des intérêts d'emprunt et soumis donc à la retenue la source correspondant, sans possibilité d'imputation du crédit d'impôt pour la banque bénéficiaire du flux. Ce cas est notamment avéré entre la France et l'Italie.

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Consultation on Improving Double Taxation Dispute Resolution Mechanisms

Fields marked with * are mandatory.

Introduction

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact TAXUD-UNIT-D2@ec.europa.eu

More information:

- on this [consultation](#)
- on the [protection of personal data regime](#) for this consultation

Member States have sovereignty in designing their own direct tax systems and procedures. Consequently, 28 different national tax regimes can potentially apply to the same transaction in the European Union (EU) and may result in the imposition of comparable taxes by two (or more) tax jurisdictions in respect of the same taxable income or capital (Double Taxation). For example, a company being resident in a Member State can perform activities in a second Member State, which characterize a Permanent Establishment and be taxable in the two Member States on the same income deriving from the Permanent Establishment. Another example would be a company located in a third State and doing business in several Member States and being taxed on the same income by these Member States.

So far, the EU Member States are trying to resolve double taxation cases based on bilateral double tax conventions (DTC) or multilateral conventions. The OECD Model Tax Convention on Income and on Capital (MTC) is the most frequent tool used in this field. DTCs assign taxing rights between the Residence State and the Source State. DTCs regularly provide for a mutual agreement procedure (MAP) to solve differences arising between States in their application, whereby the corresponding competent authorities shall discuss the issue to solve it but are under the basic form of this procedure not bound to reach a solution. In its 2008 update, the MTC suggest supplementing the MAP with a clause that requires agreeing on a solution by way of arbitration.

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.

This result of the 2010 public consultation is in line with the findings of the OECD in the context of its [Project on Dispute resolution](#), which resulted in updating the [OECD MTC](#) with an arbitration provision applicable to all disputes in July 2008. However, the arbitration provisions are not regularly inserted into the double tax conventions. The issue therefore persists as confirmed in the context of the OECD project on Base Erosion and profit shifting, [Action 14, "Making Dispute Resolution Mechanisms more Effective"](#).

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 a inter governmental seminars on double taxation issues and insufficiency of international agreements
- March 2013: Launch of Study to identify and describe most frequent double taxation cases in the internal market (delivered in 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](#).

Why business focus?

Given the relevance of the issue in the context of business taxation which persists despite the broad availability of DTC and the Arbitration Convention, the Commission decided to first focus on addressing the shortcomings identified for the situation of business taxation. It will then assess whether the solutions under reflection would be appropriate for being extended to other areas of taxation.

The corporate taxpayers who took part in the 2010 consultation reported that the amounts involved in double taxation disputes, amplified by administrative and legal costs, are sometimes so high that they create serious economic risks for companies.

Accordingly, the Commission included the objective of improving double taxation dispute resolution mechanisms in its Communication of an [Action Plan for a Fair and Efficient Corporate Tax System in the EU](#). The Action Plan focusses strongly on measures to avoid base erosion and profit shifting ("BEPS"), but it is also recognised that these efforts must be complemented by improving mechanisms for the elimination of double taxation to ensure certainty and predictability for business as double taxation in the Single Market has a negative impact on cross border investment and leads to economic distortions and inefficiencies.

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, by summer 2016. The aim is to create a coordinated EU approach to dispute resolution, with clearer rules and more stringent timelines, building on the systems already in place. This will inter alia review how the scope of advanced mechanisms (e.g. the EU Arbitration Convention) can be extended (broaden the scope) within the Union and how to make the existing mechanisms enforceable (i.e. be effective as regards the goal of solving double taxation disputes) and more efficient (i.e. achieving this goal in an optimal way as regards time, costs and burden for all stakeholders) to improve the functioning of the Single Market.

In summary, the key objectives of the initiative focus on **Scope, Enforceability and Efficiency**.

Purpose of this consultation

This consultation wants to gather all stakeholders' views in particular on:

- the relevance of removing double taxation for enterprises operating cross border;
- the objectives which are suggested to be pursued at the EU level and which are aiming at fulfilling the Action Plan commitment of an improved dispute resolution mechanism;
- the solutions which are discussed.

Glossary

Arbitration

According to the OECD glossary of tax terms, this term is used for the determination of a dispute by the judgment of one or more persons, called arbitrators, who are chosen by the parties and who normally do not belong to a normal court of competent jurisdiction. A specific clause on arbitration is provided for by the OECD Model Tax Convention (Treaty) under Article 25 of the said OECD Model Tax Convention (Treaty).

Associated Enterprises

According to the OECD glossary of tax terms, generally speaking, enterprises are associated where the same persons participate directly or independently in the management, control or capital of both enterprises, i.e. both enterprises are under common control.

BEPS

Base Erosion and Profit Shifting. The term is hereafter referred to in the context of the OECD Base Erosion and Profit Shifting 15-point Action Plan published in 2013 (see OECD (2013), Action Plan on Base Erosion and Profit Shifting, [OECD BEPS Action Plan](#))

Double taxation

In the Commission Communication on Double Taxation in the Single Market (C(2011)712 final), double taxation is defined as the imposition of comparable taxes by two (or more) tax jurisdictions in respect of the same taxable income or capital. Although double taxation can also occur in purely

domestic situations, in particular as far as it concerns economic double taxation, this Consultation focuses on cross-border situations only.

Traditionally, double taxation is divided into two kinds, juridical double taxation and economic double taxation. In the case of juridical double taxation two comparable taxes are applied to the same taxpayer in respect of the same income or capital. Generally the expression economic double taxation is used when different taxpayers are taxed in respect of the same income or capital.

Double Tax Conventions, DTC (treaties)

According to the OECD glossary of tax terms, a Double Tax Convention (Treaty) is defined as an agreement between two (or more) countries for the avoidance of double taxation. A tax treaty may be titled a Convention, Treaty or Agreement.

EU Arbitration Convention, AC

The term "Arbitration Convention" shall be construed hereafter as the [Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises](#), which is a multilateral instrument establishing a procedure to resolve disputes where double taxation occurs between enterprises of different Member States as a result of an upward adjustment of profits of an enterprise of one Member State (transfer pricing and allocation of profit to Permanent Establishments)..

Model Tax Conventions, MTC (treaties)

According to the OECD glossary of tax terms, a model tax convention (treaty) is designed to streamline and achieve uniformity in the allocation of taxing right between countries in cross-border situations. Model tax treaties developed by OECD and UN are widely used and a number of countries have their own model treaties. When it is referred to "Model Tax Convention(s)" hereafter, it should be narrowly construed as the OECD Model Tax Convention(s).

Multilateral Instrument or Agreement

A written agreement between three or more sovereign States establishing the rights and obligations between the parties. It can refer hereafter to a specific clause in a multilateral convention (treaty) or to the multilateral convention (treaty) itself.

Mutual Agreement Procedure (MAP)

A means through which tax administrations consult to resolve disputes regarding the application of double tax conventions. This procedure, described and authorized notably by Article 25 of the OECD Model Tax Convention, can be used to eliminate double taxation that could arise from a transfer pricing adjustment.

Permanent Establishment

According to the OECD glossary on tax terms the term is used in double taxation agreement (although it may also be used in national tax legislation) to refer to a situation where a non-resident entrepreneur is taxable in a country; that is, an enterprise in one country will not be liable to the income tax of the other country unless it has a "permanent establishment" through which it conducts business in that other country. Even if it has a PE, the income to be taxed will only be to the extent that it is 'attributable' to the PE

* Are you replying as:

- a private individual
- an organisation or company
- a public authority or an international organisation
- Other

if other, please specify

* Your name (first and last name if you are responding as an individual):

Contact email address:

The information you provide here is for administrative purposes only and will not be published

* Is your organisation included in the Transparency Register?

(If your organisation is not registered, we invite you to register here, although it is not compulsory to be registered to reply to this consultation. Why a transparency register?)

- Yes
- No

If so, please indicate your register ID Number:

* Type of organisation

- Academic institution
- Consultancy, law firm
- Industry association
- Non-governmental organisation
- Trade union
- Company, SME, micro-enterprise, sole trader
- Consumer organisation
- Media
-

- Think tank
- Other

Please describe the interest you represent (kind, size etc.)

100 character(s) maximum

The FBF represents the interests of French banks.

* Where are you based?

- Austria
- Belgium
- Bulgaria
- Cyprus
- Czech Republic
- Germany
- Denmark
- Estonia
- Greece
- Spain
- Finland
- France
- Hungary
- Croatia
- Ireland
- Italy
- Lithuania
- Luxembourg
- Latvia
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Sweden
- Slovenia
- Slovak Republic
- United Kingdom
- Other

If other country, please specify

* Do you represent interrests or carry out your activity at:

- National level (your country only)
- EU level (in one or more other EU Member States)
- International level (including EU)
- International level (excluding EU)

PLEASE NOTE: The following information is requested if you are a company, SME, or sole trader

Additional information requested if you are a company, SME or sole trader:

Is your enterprise a multinational enterprise (group with establishments in more than one country)

- No
- Yes

If yes, please specify the countries in which you are active or were active during the last 4 years (more than one choice is possible)

- Austria
- Belgium
- Bulgaria
- Cyprus
- Czech Republic
- Germany
- Denmark
- Estonia
- Greece
- Spain
- Finland
- France
- Hungary
- Croatia
- Ireland
- Italy
- Lithuania
- Luxembourg
- Latvia
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Sweden
- Slovenia
- Slovak Republic
- United Kingdom
- Other

Number of employees

- self-employed
- 1 - 9
- 10 - 49
- 50 - 249
- 250-499
- 500 or more

Turnover

- 0 - €10 million
- 10 - €40 million
- 40 - €750 million
- more than €750 million

Main field of activity or sector

- Aeronautics and Space
- Agrofood
- Automotive Industry and Services
- Pharmaceuticals and Healthcare
- Construction
- Transport and Logistics
- Electrical and Electronic Engineering Industries
- Chemicals
- Textile
- Banking
- Consultancy
- Other

if "other", please specify

Please provide your [NACE](#) code

PLEASE NOTE: The following additional information is requested if you are a public authority:

*Type of public authority

- International or European organisation
- Regional or local authority
- Government or Ministry
- Regulatory authority, Supervisory authority or Central bank
- Other public authority

* Important notice on the publication of responses

*Please note: The European Commission will prepare a report summarizing the responses. Contributions received are thus intended for publication on the Commissions website (see specific privacy statement).

Do you agree to your contribution being published?

- Yes, I consent to all of my answers being published under my name (name of your organization/company/public authority or your name if you reply as an individual)
- Yes, I consent to all of my answers/personal data being published anonymously
- No, I do not want my response to be published

* I declare that none of the information I provide in this consultation is subject to copyright restrictions

- Yes
- No

2. Your opinion

Case considered: an enterprise is doing business in the Member State where it is resident and in another Member State. Tax is imposed by both Member States on the income from this same cross border business activity.

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

*Please note that one or several statements can be ticked below

- a)** The possibility for taxpayers to appeal in front of domestic tax courts in Member States for obtaining a judgment on the correct application of the tax law of the respective Member States is sufficient although such appeals do not address the issue of double taxation. *Double taxation resulting from differences in domestic tax laws is a risk when doing cross border business.*
- b)** In the European Union Internal Market, there should be measures in place allowing Member States to consult and agree/not agree with each other. *The possibility for the Member States to amicably agree to solve a double taxation dispute based on a mutual agreement procedure under their existing tax treaties network is sufficient even if these double taxation treaties do not guarantee that double taxation is removed.*
- c)** In the European Union Internal Market measures have to be in place in such a case that ensure that double taxation is removed. The mechanisms under the existing tax treaties network should be strengthened and made more efficient, in order to oblige the Member States to conclude a final and effective agreement on the elimination of the double taxation within an appropriate time period (for instance, 2 years). The existing mechanisms should focus on ensuring a direct effect of the decision eliminating the double taxation for the taxpayers and guarantee recourse and appeal right in case of non effectiveness)
- d)** No opinion
- e)** Other opinion

If you have an other opinion, how do you think could double taxation disputes be solved best ?

200 character(s) maximum

2.2 I/my organisation personally experienced situations where I was impacted negatively by a double taxation case in the past 4 years

- Yes
 No

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?

	Fully sufficient	A good basis needing partial improvement	I have no opinion	Just a starting point	Not sufficient	I don't know
*As regards the scope	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*As regards the enforceability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*As regards efficiency	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

2.4 What do you think are the **impacts** of double taxation arising in the EU?

IMPACTS

	I completely agree	I somewhat agree	I have no opinion	I somewhat disagree	I completely disagree	I don't know
*Double taxation can create barriers for cross border transactions and business	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Double taxation has a negative effect on the diversity and quality of goods and	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

services available in my country						
*Double taxation can drive investment away from my country	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Double taxation can prevent foreign investors from coming to my country	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Double taxation will protect the economy in my country from competition with foreign enterprises	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Double taxation can in long term be detrimental to economic growth and creation of jobs	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other impacts of double taxation you would like to indicate:

500 character(s) maximum

3. The objectives

In case you are an affiliate, please provide the country where your headquarter is established

Do you want the EU to pursue the following **objectives** to achieve effective elimination of double taxation for business transactions?

OBJECTIVES

	I completely agree	I somewhat agree	I have no opinion	I somewhat disagree	I completely disagree	I don't know
*Ensuring recourse and access to an effective dispute resolution mechanism for all double taxation cases impacting business in the income tax area	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Reducing costs of tax administrations	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Safeguarding competitiveness of enterprises in the EU with a focus on reducing costs of dispute and litigation procedures for them	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

<p>*Ensuring a timely resolution of double taxation disputes</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*Ensuring a fair and predictable tax system by promoting a EU wide coherent approach of treatments of dispute resolution</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*Ensuring transparency by publishing main parts of the double taxation dispute cases/decisions</p>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*Safeguarding the financial interest of the Member States by improving collection of the tax deemed due</p>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*Contributing to a business friendly tax environment to attract</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

investment and jobs						
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Would you add other objectives in the context of double taxation? Please explain briefly

500 character(s) maximum

4. EU Action

4.1 Do you want the EU to pursue the following directions?

EU ACTION

	I completely agree	I somewhat agree	I have no opinion	I somewhat disagree	I completely disagree	I don't know
*There is no need for action at the EU level, as the existing situation is satisfactory and will continue to be in short and long term.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*The EU should limit itself to encourage MS to adopt mechanisms in their bilateral relations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*The EU should build on the existing mechanisms for double taxation dispute resolution already agreed on EU level e.g. the EU Arbitration Convention/bilateral	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

DTC and address those areas where they are inefficient.						
*The EU should ensure that the taxpayer should have a stronger role in the inter State double taxation dispute resolution mechanism.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*The EU should ensure that double taxation dispute resolution mechanisms are designed in a way that they guarantee the elimination of double taxation	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*A new and comprehensive legal tool should be developed by the EU to ensure that double taxation disputes are resolved.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*The EU initiative should be						

compatible with mechanisms available at international level	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Do you think there is other EU Action to be considered?

200 character(s) maximum

4.2 What is your view about possible options?

Option A i): Improve the efficiency of bi- and multilateral instruments

A i) In this option, the EU would encourage 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, including an arbitration clause

In your opinion, would option A i) meet the general objectives of scope, enforceability and efficiency?

	Will fully meet the objective	Will partly meet the objective	Will not meet the objective	No opinion	I don't know
*Scope	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Enforceability	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Efficiency	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Option A ii): Improve the efficiency of bi- and multilateral instruments

In this option, the EU would encourage 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 on any remaining double-taxation dispute between EU Member States after a limited period of time. An example of such a mechanism can be found in [Art. 25 of the German-Austrian tax treaty](#)

In your opinion, would option A ii) meet the general objectives of scope, enforceability and efficiency?

	Will fully meet the objective	Will partly meet the objective	Will not meet the objective	No opinion	I don't know
*Scope	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Enforceability	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Efficiency	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Option B: Enforced, effective and broader dispute resolution mechanisms

A requirement for EU 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 (e.g. 2 years) after a justified claim of a taxpayer. If Member States fail within this period – including by denying access to the procedure - a fast-track recourse will be open to the same taxpayer with his national court to take steps, so that Member States are requested to appoint an arbitration or mediation body to be in charge of taking a final decision on the elimination of the disputed double taxation, binding towards the Member States and

- 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).

In your opinion, would option B meet the general objectives of scope, enforceability and efficiency?

	Will fully meet the objective	Will partly meet the objective	Will not meet the objective	No opinion	I don't know
*Scope	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Enforceability	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Efficiency	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Option C: A comprehensive new EU legal instrument

A new comprehensive EU legal instrument providing for an effective elimination of double taxation at EU level. This would foresee specific and targeted substance-based solutions for all identified conflicting tax legislations triggering double taxation for cross-border situations within the scope of this directive, and would contain a dispute resolution mechanism which ensures that disputes on the interpretation of these provisions are solved with legal certainty as well as guaranteed recourses before court given to taxpayers.

In your opinion, would option C meet the general objectives of scope, enforceability and efficiency?

	Will fully meet the objective	Will partly meet the objective	Will not meet the objective	No opinion	I don't know
*Scope	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Enforceability	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

*Efficiency	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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4.3 Way forward

In your opinion, would the dispute resolution mechanisms discussed in Section 4 be appropriate for double taxation disputes arising in other areas of income taxation e.g. personal income tax (cost benefit ratio)?

	Fully appropriate	Partly appropriate	I have no opinion	Not appropriate	I don't know
*Option A i)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Option A ii)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Option B	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Option C	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

5. Additional Information

Please note that you have the opportunity to upload documents to further support or illustrate your views.

These documents will not be published and be used for background reading, where necessary.

The analysis of this consultation will be based on the responses to the questions.

If you would like to provide us with further information, please upload here

Please upload your file

34859503-5d85-46ae-a9ee-89a6544cb9d0/20160509_consultation_UE_double_imposition_contribution

Contact

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