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| From: | Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director |
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| To: | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union |
| No. Cion doc.: | SWD(2016) 344 final |
| Subject: | COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document Proposal for a COUNCIL DIRECTIVE on Double Taxation Dispute Resolution Mechanisms in the European Union |

Delegations will find attached document SWD(2016) 344 final.

Encl.: SWD(2016) 344 final



Strasbourg, 25.10.2016
SWD(2016) 344 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a COUNCIL DIRECTIVE

on Double Taxation Dispute Resolution Mechanisms in the European Union

{ COM(2016) 686 final }
{ SWD(2016) 343 final }

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| Executive Summary Sheet |
| Impact assessment on improving Double Taxation Dispute Resolution Mechanisms (DTDRMs) |
| A. Need for action |
| Why? What is the problem being addressed? |
| <p>Double taxation of income by different Member States has a negative impact on cross-border investment and leads to economic distortions and inefficiencies creating an unstable environment for both taxpayers and tax administrations. Existing mechanisms for solving double taxation disputes in the EU, such as Mutual Agreement Procedures ('MAP') as part of Double Taxation Conventions ('DTC') or the EU Arbitration Convention on transfer pricing disputes ('EU-AC'), show several shortcomings in terms of scope, effectiveness and efficiency. Information available provides evidence for cases where access is denied, procedures are blocked or delayed or compliance burden for taxpayers is too high. The negative impact of these shortcomings is increasing due to globalisation trends, driven by the rise of cross-border transactions, the incremental number and size of tax audits and the overall complexity of tax rules. Currently there is often no obligation for Member States to ensure a definitive and conclusive resolution of disputes in a timely and efficient manner. In addition there is a lack of uniform application of dispute resolution within the EU.</p> |
| What is this initiative expected to achieve? |
| <p>The aim is to improve DTDRMs in the EU in order to ensure an effective and conclusive resolution of cases of double taxation disputes with a full elimination of the double taxation. The focus is on improving current mechanisms with the aim to create a reasonable timeframe for the procedure, a uniform and broader scope of application within the EU as well as increased efficiency and certainty in terms of implementation of the final decision.</p> |
| What is the value added of action at the EU level? |
| <p>The EU added value is grounded in the fact that uniform and coordinated implementation is necessary for effectively improving dispute resolution. It is also necessary to address them consistently in the current context of a global fight against tax avoidance and evasion. Such an initiative will create added value to the EU acquis in the area of taxation and in particular to the Transfer Pricing framework in terms of efficiency and enforceability when combined with the solution proposed.</p> |
| B. Solutions |
| What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why? |
| <p>Different options have been considered including</p> <ul style="list-style-type: none"> • recommendations to improve the functioning the existing DTDRM in the EU, • a recommendation to involve the Court of Justice of the EU as arbitrator in cases where no mutual agreement can be reached • a directive to ensure an enabling legal framework for the application of broadened DTDRM in the EU • a directive foreseeing a comprehensive new legal instrument with conflict rules and a DTDRM. <p>Valuing the different options has led to a preferred option taking the form of a Directive. The</p> |

development of a comprehensive new legal instrument with specific conflict rules is regarded as less appropriate due to the fact that in nearly all bilateral relations such conflict rules already exist in DTC. An additional layer of conflict rules would rather be detrimental. Instead a directive proposal is chosen where the existing mechanisms will be combined with a mandatory binding arbitration phase as a last resort and a recourse given to taxpayers in front of domestic tax courts to unblock delays or denial of access to the procedure. The analysis shows that this option has clear advantages in terms of effectiveness and timeliness as it relies on the existing practices and would be advantageous compared to the alternative of not taking any action or issuing a recommendation .

Who supports which option?

The initiative has received general support from a business stakeholder group and from a number of Member States who are primarily concerned by the negative impacts. NGOs, private individuals and other respondents to the consultation did not express a negative position but in contrast underlined the rather positive impact of other initiatives such as the CCCTB.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

Implementation of the preferred option is expected to increase the fairness of tax systems and to create a level playing field by effectively removing double taxation in the EU. This would help to ensure that corporations pay a fair share of the tax burden and enhance the overall fairness of the tax systems. Furthermore, cross-border tax obstacles would be effectively eliminated within the EU. Substantial economic distortions would be reduced creating a favourable climate for growth and investment. There is no detailed quantitative data and projections available on these expected benefits at the level of the taxpayers or the Member States. However, the current size of cases under the existing DTDRM is estimated at 910 cases at the end of 2014 with EUR 10.5 billion at stake, corresponding to 3 % of the total corporate income tax levied in the EU for the year 2014 (EUR 351 billion).

What are the costs of the preferred option (if any, otherwise main ones)?

The costs of the proposal in terms of national tax revenue depend on the way Member States adjust their resources to comply with their obligations foreseen under the proposal. These costs should however be limited and not significantly differ from the costs currently encountered for DTDRM as the initiative is built on the existing acquis and an optimised combination with the overall EU Transfer Pricing framework. They should also trigger economies of scale as similar investment in resources and administration capacity will be required at the level of tax administrations to meet similar objectives at the international level (OECD BEPS Action 14). There is no quantitative data on the costs of administration for tax authorities available in the above described context.

How will businesses, SMEs and micro-enterprises be affected?

The initiative will affect all taxpayers with business income and create a more level playing field within the EU. It is designed to fit with SMEs particularities so as to give the possibilities for Member States to propose more appropriate alternative dispute resolution mechanisms (e.g. mediation) or fast track solutions. Overall, the proposed solutions offer benefits e.g. in terms of lower compliance costs and better efficiency. Consequently, the impact is positive.

Will there be significant impacts on national budgets and administrations?

Overall in the medium term, the initiative should have positive consequences for investment, growth and jobs and a positive impact on future tax collection and consolidation of tax revenues is expected.

Will there be other significant impacts?

The initiative will improve the attractiveness of the EU as regards investment and is expected to increase the competitiveness of the EU overall because it will provide a more stable and certain basis for taking investment decisions. Business activities are expected to be more profitable and the economy more resilient.

D. Follow up

When will the policy be reviewed?

The policy will be evaluated five years after its implementation. Such a period seems reasonable given that taxpayers and tax administrations need time to adjust in the management of their double taxation dispute cases and provide the relevant data.