



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
Ares(2016)

Opinion

Title

DG TAXUD – Improving Corporate Double Taxation Dispute Resolution Mechanisms

(version of 27 July 2016)*

(A) Context

There is currently no general EU measure to eliminate double taxation, apart from an EU Arbitration Convention on transfer pricing disputes. Most EU countries have bilateral tax treaties in place that include Mutual Agreement Procedures (MAPs) as a mechanism to solve any double taxation disputes.

This initiative aims to improve the double taxation dispute resolution mechanisms (DTRMs) to ensure effective and conclusive resolution of intra-EU corporate taxation disputes. It follows up the June 2015 Action Plan for a Fair and Efficient Corporate Tax System in the EU.

(B) Overall opinion: POSITIVE

The Board gives a positive opinion, on the understanding that the impact assessment report will be improved with respect to the following key aspects:

- (1) The scope and context of the initiative should be better explained, in particular why double taxation of individuals is not covered.**
- (2) The problem definition should clarify the need for the EU to act. The impact assessment should be clear on where current mechanisms, including the EU Arbitration Convention are or may become inadequate for purpose. The baseline should consider the likely evolution of the problem following the introduction of the Common Consolidated Corporate Tax.**
- (3) The objectives should be better linked to the problems and rephrased to reflect what the initiative aims to achieve. The impact assessment should explain how the options relate to the EU Arbitration Convention.**
- (4) The impact analysis should be further elaborated with additional quantitative and qualitative analysis. The proportionality of the options, in particular the ambitions of the option on the comprehensive mechanism should also be clarified. Finally, the report should explain the criteria and methodology used to rank the different options.**

The lead DG shall ensure that these recommendations are integrated in the report prior to launching the interservice consultation.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

(C) Main recommendations for improvements

(1) Clarify the scope of the initiative. The context and scope of the initiative should be better explained, including why it covers only corporate taxation and not double taxation of individuals. The text should substantiate whether there is a problem concerning individual taxation, to what extent this is already covered by other measures and whether it will be addressed at a later stage.

(2) Improve the problem definition. The problem definition should more clearly explain why EU action is justified at this point in time. It should assess how effectively the EU Arbitration Convention is providing dispute resolution. Where possible, more granular data should be included on the numbers of cases and amounts, such as by Member State. It should clearly acknowledge any relevant data limitations. It should better describe the EU aspect of the problem vis-à-vis third countries, including by clearly presenting the evolution of corporate taxation at the global level. The baseline should reflect the consequences of introducing the common consolidated corporate tax base (CCCTB).

(3) Clarify the policy objectives and options. The report should clarify the link between the problems, objectives and options (the 'intervention logic'). On this basis, the report should clearly describe the relationship between the options and how they were arrived at. In particular, it should be explained how the functioning of the EU Arbitration Convention would be influenced by the specific policy choices.

(4) Better assess and compare the impacts. The impact analysis should be strengthened and data-supported as far as possible. In the absence of data, the impact assessment could include illustrative examples to strengthen key points. The assessment of the proportionality of the options should be further elaborated. Finally, the justifications and methodology used to compare the options should be explained and substantiated, in order to clarify their ranking and choice of the preferred option.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The report could be made more readable and accessible for non-specialists.

(E) RSB scrutiny process

Reference number	2016/TAXUD/007
External expertise used	No
Date of RSB meeting	07 September 2016