

PUBLIC CONSULTATION PAPER

Double Tax Conventions and the Internal Market: factual examples of double taxation cases

Note:

This document is being circulated for consultation.

The sole purpose of this consultation is to collect relevant information and help the Commission develop its thinking in this area.

This document does not necessarily reflect the views of the European Commission and should not be interpreted as a commitment by the Commission to any official initiative in this area.

The parties concerned are invited to submit their comments no later than **30/6/2010**.

Comments may be sent by letter, fax or electronic mail to the following address:

European Commission
Directorate-General for Taxation and Customs Union
Rue de Spa 3, Office 8/007
B-1049 Brussels
Belgium
Fax: +32-2-29 56377
E-mail: TAXUD-E1-Consultation@ec.europa.eu

I. What is the aim of this consultation?

The Commission is launching this public consultation with a view to encouraging members of the public to provide factual examples of cases of double taxation that they have encountered in their cross-border activities. By double taxation we mean the application of comparable taxes in two or more Member States on the same taxpayer with respect to the same income or asset. The consultation concerns taxes which taxpayers pay directly to tax authorities (i.e. "direct taxes") such as income taxes, corporate taxes, capital gains taxes, withholding taxes, inheritance taxes and gift taxes.

It is undesirable that in the EU Internal Market a taxpayer is subject to double taxation solely by reason of his cross-border activity. Our aim is to obtain a picture of the real size of the problem and of its financial impact. In a case where the double taxation has been eliminated after appeal to one or more tax authorities, we would also like to know how long it has taken for this to happen. You are also invited to provide any suggestions you might have for ways in which the different cases of double taxation in the EU could be avoided.

I.1. Background

As more EU citizens cross national borders to work and more cross-border trade and investment takes place within the EU Internal Market, there are more cross-border tax problems, including a higher risk of unrelieved double taxation.

Over the years, EU Member States have concluded bilateral or multilateral double tax conventions (DTCs) with each other that help to allocate taxing rights between the signatory states and provide relief if double taxation arises. These DTCs generally have the Model Tax Convention of the Organisation for Economic Co-operation and Development (OECD) as their basis.

DTCs have also contributed to creating a system of exchange of information on tax matters between tax authorities that helps to ensure taxpayer compliance and prevent tax evasion.. Furthermore, DTCs contain measures to ensure mutual assistance between tax authorities in tax collection and the resolution of tax disputes caused by differences in the interpretation or application of DTCs. In addition, DTCs have contributed to the elimination of discrimination

between taxpayers who are in similar circumstances, which is a basic requirement of any fair taxation system.

However, despite the numerous benefits of DTCs for both taxpayers and tax administrations and the excellent work of the OECD in the field of international tax cooperation over the last 50 years, the Commission's analytical study on Company taxation¹ has shown that in the EU's Internal Market there are still a number of cases of double taxation that are not eliminated by DTCs. Furthermore, there is not a full network of DTCs between the 27 EU Member States.

I.2 Who is consulted?

All taxpayers (individual or corporate), or representatives of taxpayers, who have encountered double taxation in a cross-border situation.

I.3. How can I contribute?

You are invited to reply to this consultation by completing the questionnaire below online or by sending a response by letter, fax or email before[May] 2010 to:

Email: TAXUD-E1-Consultation@ec.europa.eu
Postal address: European Commission
Directorate-General for Taxation and Customs Union
Rue de Spa 3, Office 8/007
B-1049 Brussels
Belgium

Fax: +32-2-29 56377

Each contribution received will be acknowledged.

In accordance with established practice, neither the identity of contributors, nor their responses, will be revealed unless they tick the boxes in the questionnaire giving their consent on both counts.

We will take account of those responses for which confidentiality is requested in the summary that we will publish of all responses made. In the case of contributors requesting confidentiality, we will categorise their contributions by national origin.

¹ Company Taxation in the Internal Market, SEC(2001) 1681. On Double Taxation Conventions, see pages 284 – 289 under http://ec.europa.eu/taxation_customs/resources/documents/company_tax_study_en.pdf

For more detailed information on how your personal data and contribution will be treated, we recommend that you read the specific privacy statement attached to the consultation.

In the interests of transparency, organisations responding to this consultation are invited to provide the public with relevant information about themselves by registering in the Interest Representative Register and by subscribing to its Code of Conduct (see <https://webgate.ec.europa.eu/transparency/regrin/welcome.do?locale=en>). If the organisation is not registered, the submission will be published separately from those of registered organisations.

I.4. What will happen next?

At the end of the consultation process the Commission will publish a report summarising the outcome of the consultation on the website of the Taxation and Customs Directorate General (http://ec.europa.eu/taxation_customs/common/consultations/tax/index_en.htm).

In addition, the Commission will analyse carefully the information provided in order to understand the reasons that underlie the reported cases of double taxation in the EU. It will then launch a debate on how these could be eliminated and consider if there is a need for action at EU level.

I.5. Any questions?

Please contact: TAXUD-E1-Consultation@ec.europa.eu or tel. + 32 2 29 64846 or fax: +32-2-29 56377

We hope you will take this opportunity to contribute your views!