Improving double taxation dispute resolution mechanisms

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Section 3.2 of the June 2015 Action Plan for a Fair and Efficient Corporate Tax System in the European Union recognises that

- double taxation has a negative impact on cross border investment and
- causes economic distortions and inefficiencies

Commission will propose improvements to the current mechanisms to resolve double taxation disputes in the EU, by summer 2016.
The current mechanisms

- Disputed reassessment in a cross-border direct taxation case triggering double taxation liability at EU taxpayer’s level

Actions available to taxpayer:
- Appeal
  - Without Arbitration Clause
  - With Arbitration Clause (rare)

Cause:
- Domestic court
- Request for Mutual Agreement Procedure under DTC
- Request for procedure under EU Arbitration Convention

Bi- or multilateral action:
- Elimination of double taxation (DT)
- Income tax cases (all)
- Transfer pricing & PE profit (limited)

Unilateral:
- Reassessment targeted (substance)
The problems

Issue: No Double Taxation Convention and AC not applicable

Action that results in double taxation

3 YEARS

Request for MAP under AC or DTC

2 YEARS

Deadline for concluding MAP

DTC with Arbitration or AC

Elimination of double taxation

Unilateral

Implementation of decision

6 MONTHS

Decision (independent opinion or "baseball")

6 MONTHS

Appointment of advisory commission

Issue: Denial of Access to the procedure.
Reasons:
• Case not falling under AC/DTC
• Information regarded as not sufficient

Issue: Arbitration procedure not set in motion:
Reasons not foreseen in instrument:
• Lack of Action
• No agreement on composition
• Files not submitted to arbitrators

Issue: Decision of advisory commission is not implemented
Reasons: statute of limitation, non agreement of local authorities
In numbers (for the AC only)

Statistics 31.12.2014:
Bilateral cases initiated: 253
Cases completed (first phase): 105
Cases rejected: 14

Duration between request and initiation:
0-6 months: 85 %
6-12 months: 10 %
More than 12 months: 5%

Open cases: 640 (100 %)
Open more than 2 years: 260 (40,5 %)
Open for reasons not foreseen in the AC: 115 (18%)
In numbers (for the AC only)

Numbers refer to cases reported by MS not bilateral cases
The consultation strategy

- 2010 Public Cons.
- 2011 Comm.
- 2012 Change AC Stats.
- 2013 Fiscalis
- 2013 Study
- 2013/2014 Stakeholder meetings
- 2014/2015 Monitoring AC in JTPF
- 2015 Action Plan
- February 2016 Public Consultation
- March 2016 targeted consultation
- Summer 2016 Proposal
Your input

**Public consultation:** Input on problem, objectives and options (incl. their suitability for non-business taxation)


**Targeted data collection from JTPF and Platform:** input on the size and impact of the problem of double taxation from affected stakeholders:

*Link + password to be provided*