

Additional Comments to Support the Federation of European Accountants' response to the European Commission's public consultation on Improving Double Taxation Dispute Resolution Mechanisms

Part 3 – the Objectives

Reducing costs of tax administrations

The Federation is supportive of this objective but we do not believe that this should be a primary objective of any legislative proposal on dispute resolution. Some Member States regard enhanced dispute resolution as an additional administrative cost in itself, best avoided by not engaging in the process. We believe that minimising the costs of enhanced dispute resolution will be best achieved by proposing a new EU legal instrument that sets out a well-designed, clear and (as far as possible) simple process to be implemented consistently by all Member States.

Ensuring transparency by publishing main parts of the double taxation dispute cases/decisions

We support the enhanced transparency that would come from public disclosure of the main aspects of double tax dispute cases and their resolution - this would give both taxpayers and tax authorities a growing database to consult, reducing the likelihood of future disputes arising on the same issues between the same countries. However, as such cases are likely to contain commercially sensitive information, we believe that this disclosure should be anonymised, as currently happens in some Member States with the publication of tax rulings and also in the VAT Cross Border Rulings pilot scheme.

Safeguarding the financial interest of the Member States by improving collection of the tax deemed due

This is obviously a very important objective but the Federation does not believe that it should be given the highest priority. It is axiomatic that the elimination of double taxation will result in the loss of tax income by individual Member States so there would, in the short term at least, almost certainly be a reduction in corporate income tax yield when taking the EU as a whole into account. However, as we believe that double taxation suppresses cross-border trade and economic activity as a whole, we consider that any short term reductions in overall tax yield should be compensated for in the longer term by the tax arising on this additional economic activity.

Part 4.2 – Possible options

Option A i) - as indicated, the main issue with improving the efficiency of bi- and multi- lateral instruments relates to enforceability, from both the point of view of the taxpayer and the tax authorities.

Option A ii) – this option does deal with the primary problem that we have with Option A i) because it encourages Member States to include a specific enforcement mechanism in tax treaties. However, we still have concerns that referral to the European Court of Justice may not be the best manner to deal with the dispute resolution process and will not be economically feasible for smaller businesses. An alternative would be to establish a permanent European tax court or a European tax arbitration tribunal to deal with such cases as this could be structured in a way to make it easier and cheaper for SMEs to file an appeal to such bodies.

Option B – whilst we clearly see the idea behind this proposal, we do not think that it is a viable alternative as the Most Favoured Nation clause proposed in this option will simply be unworkable in practice. An arbitration clause or dispute settlement process requires the consent of both states involved. Consequently, it is not possible for Country A to apply an arbitration procedure for dispute resolution agreed with Country B to Country C without Country C’s consent or for Country C to choose to apply an arbitration procedure agreed between Countries A and B to either Country A or Country B without their consent.

Option C – In our view, a comprehensive new EU legal instrument is the best way to meet the general objectives in terms of scope, enforceability and efficiency providing that it is properly drafted and consistently implemented.

Part 4.3 – The Way Forward

The Federation would fully support a comprehensive, clear and easy to use dispute resolution mechanism covering all taxes and consistently applied by all Member States. However, we believe that this would be an extremely complicated and lengthy legislative process - leading to extremely complex legislation. Due to the probable complexity of the legislation, and the fact that it probably still would not be entirely effective for smaller dispute cases, we have chosen to select this option as “Partly Appropriate” rather than “Fully Appropriate”.

In summary, we consider that it would be preferable to concentrate in the short term on producing an effective proposal covering corporate income tax only and then expand this to include indirect tax before finally incorporating other taxes.

Other suggestions

One idea that the Federation believes to be worthy of consideration is the payment of disputed tax by the taxpayer into an escrow type account to be held in trust until the dispute has been settled by the tax authorities involved. Such an arrangement, with interest arising on the deposited funds, would encourage the tax authorities involved to come to an agreement on the matter in the shortest possible time. It would also prevent the taxpayer suffering cash flow disadvantages from having to pay the disputed tax to both of the tax authorities involved until such time that the dispute is resolved and the double taxation is removed.