

AmCham EU's response to DG TAXUD's consultation on tax problems faced by EU citizens when active across borders within the EU

Executive summary

Individuals exercising crossborder activities are often confronted by complex tax arrangements that make compliance difficult, including dealing with multiple administrations, language barriers, different interpretations of tax treaties and access to the right information. Even where there are treaties in place to prevent double or multiple taxation, the application of these procedures may be very complicated. This also leads to additional administration for, and potentially negatively impacts the competitiveness of, employers that have crossborder operations and assign employees on crossborder projects.

The European Commission (DG TAXUD) has issued a public consultation on tax problems faced by EU citizens when active across borders within the EU, to identify the issues but also good practices to address these issues. This document outlines the American Chamber of Commerce to the European Union's (AmCham EU) response to **consultation, which highlights issues faced by its members and their employees.**

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AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €2 trillion in 2013 and directly supports more than 4.3 million jobs in Europe.

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I. General identification of the stakeholder

Name of organisation:

American Chamber of Commerce to the EU (AmCham EU)

State of residence/ establishment:

AmCham EU is established in Belgium. AmCham EU's member companies are very often established in the 28 Member States

State of tax residence (if different):

Are you:

- An individual
- Tax administration of an EU country
- Expert/tax adviser/tax practitioner/lawyer
- An interest representative
- An academic
- Other (please specify)

If you are an interest representative, are you registered in the EU interest representatives' registry?

Yes

No

If applicable, you may indicate your identification number as referred to in the previous question in the registry:

5265780509-97

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Do you agree to the publication of your response?

Yes

No

Do you agree to the publication of your name and other personal data?

Yes

No

If you reply as an individual, are you a:

a) Cross-border worker (i.e. a regular commuter across a border)?

b) A mobile worker (i.e. you work/worked in several EU countries)?

c) Other? (Please specify)

II. Individuals' experience of cross-border tax obstacles

Have you yourself or the stakeholders you represent experienced cross-border tax problems?

Yes

No

If your answer to the previous question is "no" please explain the reason for your interest in the issues covered by the present public consultation:

Please indicate the country or countries in which you have encountered or are aware of cross-border tax problems:

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Austria	<input checked="" type="checkbox"/>	Germany	<input checked="" type="checkbox"/>	Portugal	<input checked="" type="checkbox"/>
Belgium	<input checked="" type="checkbox"/>	Greece	<input checked="" type="checkbox"/>	Romania	<input checked="" type="checkbox"/>
Bulgaria	<input checked="" type="checkbox"/>	Hungary	<input checked="" type="checkbox"/>	Slovakia	<input checked="" type="checkbox"/>
Cyprus	<input checked="" type="checkbox"/>	Ireland	<input checked="" type="checkbox"/>	Slovenia	<input checked="" type="checkbox"/>
Czech Rep.	<input checked="" type="checkbox"/>	Italy	<input checked="" type="checkbox"/>	Spain	<input checked="" type="checkbox"/>
Croatia	<input type="checkbox"/>	Latvia	<input checked="" type="checkbox"/>	Sweden	<input checked="" type="checkbox"/>
Denmark	<input checked="" type="checkbox"/>	Lithuania	<input checked="" type="checkbox"/>	UK	<input checked="" type="checkbox"/>
Estonia	<input checked="" type="checkbox"/>	Luxembourg	<input checked="" type="checkbox"/>	Iceland	<input type="checkbox"/>
Finland	<input checked="" type="checkbox"/>	Malta	<input type="checkbox"/>	Liechtenstein	<input type="checkbox"/>
France	<input checked="" type="checkbox"/>	Netherlands	<input checked="" type="checkbox"/>	Norway	<input checked="" type="checkbox"/>
		Poland	<input checked="" type="checkbox"/>	Switzerland	<input checked="" type="checkbox"/>

Other? (Please specify)

Please indicate the type of cross-border tax problem(s) that you have experienced:

- Discrimination from an EU law perspective¹
- Double taxation²
- Lack of tax information
- Administrative complexities

Other (Please specify)

Costs associated with tax equalisation and tax on tax, as additional allowances provided by the employer for cross-border assignments are taxed in the host country as non-resident. This creates a tax differential that the employer compensates and additional costs for mobile employees.

¹ Discrimination under EU law is the treatment of similar cases differently or the treatment of different cases in the same way. Internal Market law is mainly concerned with discrimination based on nationality.

² Double taxation for the purpose of this consultation is if the same income/transaction/item is being taxed by two different EU countries.

Have you experienced any particular cross-border tax problem linked to e-commerce, an online purchase or sale?

No

Could you please describe the cross-border tax problem(s) in more detail? (Max 500 words)

Cost increases due to tax equalisation and tax on taxes are a major issue, especially as an employee on a cross-border assignment when receiving allowances (e.g. per diems, housing, transport) is taxed in the host country on these allowances as a non-resident. This generates a tax differential that the employer compensates to ensure the employee is not disadvantaged, which in turn is considered to be additional compensation, and taxed, which generates additional costs for mobile employees and an overall tax on tax.

What effect did the tax problem have on your activities or behaviour? (Max 500 words)

Firstly, it makes providing crossborder services more costly and companies providing those services less competitive on price:

- Companies have to plan for tax differential costs. In some cases this requires an upfront payment before a foreign tax credit is recovered from the home country, creating additional costs to companies; and
- There have been instances where companies have lost market opportunities as they have to factor in the associated cost into their prices.

Secondly, employees are reluctant to take a cross-border assignment even on a short-term basis due to the associated complexity of taxation on their income.

Are you aware of any other cross-border tax problems which individuals frequently face within the EU? Could you please describe them (max 500 words)?

- Difficulty in understanding the tax rules in different jurisdictions and forms that are not translated into English or other languages.
- The administration and complexity associated with filing tax returns in two countries is a concern for employees and distracts them from their day to day work, even where tax advisory support is provided by the company, it has to be from the host and home country.
- Different processes and deadlines for filing tax returns.
- Employees on crossborder assignments are subject to taxation on their income and at the same time in their home country as a resident and the host country as a non-resident (double taxation). They can claim a foreign tax credit in their home country to ensure their tax situation is equalised, but this can only be done via the annual tax return, and it can take months to be compensated following the submission of the tax return. Requests for foreign tax credit refunds generally generate additional scrutiny from the home tax authorities on the source of the income, amount of foreign tax, etc.

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- In addition, it can be difficult for employees that are tax equalised (by their employer) to understand why their taxable base in the host country is so high as non-tax residents, due to the taxation of allowances and tax on tax (gross up effect).
- Under current VAT rules applicable to distance selling, including online sales, consumers can end up paying a different level of VAT on cross-border purchases from traders in the same EU Member State. This is due to the fact that under certain value thresholds, a trader can either charge the consumer the VAT level applicable in the country of the trader, or the VAT level applicable in the country of the consumer. If the trader exceeds a designated threshold on the value of sales into another EU Member State, the trader has to establish a local fiscal presence and declare local VAT (and charge the consumer accordingly). This procedure is complicated further as the thresholds on the value of sales into another EU Member States vary across countries. This results in confusion for consumers which are charged different VAT rates in a relatively inconsistent manner, and also discourages traders from selling across EU borders, as they have to deal with different thresholds per EU Member State, and different VAT compliance procedures in various Member States.

III. Rules or practices in your EU country of residence, or in another EU country with which you are familiar, that are aimed at finding solutions to individuals' cross-border tax problems

Have you taken any steps to resolve the cross-border tax issues you have encountered?

Yes

No

If the answer to the previous question is “no”, could you please explain why you did not take any further steps (max 500 words)?

If the answer to the previous question was “yes”, have you been successful in resolving the cross-border tax issue(s) faced?

Yes

No

If yes, please indicate what the solution(s) to the cross-border tax problem(s) involved:

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- Obtaining specific tax information
- Contacting specific tax offices
- Using the assistance of One-Stop-Shops³
- The application of specific procedures
- Bilateral or multilateral cooperation
- Using specific tax forms
- Using tax forms common to two or more EU countries
- Finding tax information in a range of languages
- Other (please specify) (max 500 words)

In some cases it has been resolved through specific letters and meetings with local tax authorities. It also tends to be resolved more easily where there is existing exchange of information and cooperation between tax authorities.

Who were the actors involved in finding solution (s)?

- The tax administration in the country of residence
- The tax administration in the other country
- A central tax office
- A tax office specialised in cross-border tax issues
- A Solvit centre⁴
- Your Europe Advice⁵

³ Usually a specialised office for taxes or for several types of administrative issues where an individual can deal with a number of formalities that are related to each other without needing to contact a number of different authorities or offices.

⁴ SOLVIT (www.ec.europa.eu/solvit) is an on-line problem solving network in which EU countries work together to solve without legal proceedings problems caused by the misapplication of Internal Market law by public authorities. There is a SOLVIT centre in every European Union country (as well as in Norway, Iceland and Liechtenstein). SOLVIT Centres can help with handling complaints from both **citizens** and **businesses**. They are part of the national administration and are committed to providing real solutions to problems within ten weeks. Using SOLVIT is free of charge.

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- Europe Direct⁶
- EURES network office⁷
- European Consumer Centre⁸
- The National Ombudsman's office

Was the solution sufficient?

- Yes
- No

Do you want to provide more details about the solution(s) (max 500 words)?

The local tax authorities in the 28 Member States are not always familiar with the complexity of the taxation of crossborder assignments, for example sourcing based on work days for non-tax residents or trailing liabilities on equities.

Have you been in contact with other stakeholders, in your country or in other EU countries, who have experienced cross-border tax problems?

- Yes
- No

Do you want to provide more information on such contacts (max 500 words)?

⁵ Your Europe Advice (www.europa.eu/youreurope/advice/index_en.htm) is an EU advice service for the public. It consists of a team of lawyers who cover all EU official languages and are familiar both with EU law and national laws in all EU countries.

⁶ Europe Direct offers (www.europa.eu/europedirect/index_en.htm) a central information service reachable by phone or internet and local information services in every EU country providing information tailored to local needs.

⁷ EURES (www.ec.europa.eu/eures/) provides information, advice and recruitment/placement (job-matching) services for the benefit of workers and employers as well as any citizen wishing to benefit from the principle of the free movement of persons.

⁸ European Consumer Centres (www.ec.europa.eu/consumers/ecc/contact_en.htm) offer free consumer advice and support to EU residents who are buying goods or services from traders based in other EU countries.

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IV. Your opinion on best practices in taxation that could or should be adopted in order to address the most frequent cross-border tax problems faced by individuals

On the basis of your experience with cross-border tax problems, do you consider any of the practices applied by the tax authorities of the EU countries involved as best practices that should be applied more widely?

Yes

⇒ Please provide details and explain why (max 500 words).

Some countries allow foreign tax reimbursement in the home country to be made directly to the company for taxes paid in another jurisdiction, where the company has paid the host country taxes on behalf of the employee. This reduces the associated administration with reimbursement, particularly in cases where the employee has left the company, as the employer does not have to seek reimbursement from the former employee.

No

⇒ Please explain why not (max 500 words).

Have you any ideas/ suggestions for how to solve individuals' cross-border tax problems?

Yes

No

If yes, please specify (max 500 words)

- Allow the foreign tax reimbursement in the home country for taxes paid in another jurisdiction to be made directly to the company that has paid the host country taxes on behalf of the employee. This reduces the associated administration with reimbursement, particularly in cases where the employee has left the company, as the employer does not have to seek reimbursement from the former employee.
- A system where actual tax withholdings are not imposed on a tax resident, if they are imposed in the host country on the same income and at the same time. This will avoid paying taxes in multiple jurisdictions and having to wait for a foreign tax credit refund in the country where they are tax resident, which can take up to two years.
- Agreement between Member States not to tax the tax differential between the home and host country for tax residents and non-tax residents. Many countries have a favourable tax regime for expats allowances and/or the tax differential is not taxed. However, this generally only applies to tax residents. Commuting employees that remain tax resident where they live but are non-tax resident where they work, do not benefit from this favourable tax regime.

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Therefore taxation of this tax differential (tax on tax or gross-up mechanism) has a huge cost for companies that compensate employees, which is factored into prices and makes them non-competitive in the market place.

- As it will be difficult to align tax rules in the 28 Member States, an agreement on a de minimus threshold of 183 days of physical presence, under which a tax resident working in another Member State for his home employer, will not be taxable in the host country. This would overcome some of the complexities on differing sourcing rules, methodologies for counting workdays or physical presence, interpretations of double tax treaties, even under OECD rules. It will also reduce the tax burden for individual employees and administration for employers and tax authorities.

Could these ideas be applied by all EU countries?

- Yes
- No

Please provide further information if so wished (max 500 words)

Have you encountered or heard of solutions in areas other than taxation or in other EU countries or non-EU countries that could be useful in reducing cross-border tax problems?

- Yes
- No

If yes, please specify (max 500 words)

Some non-EU countries have favourable tax regimes for expats even if non-tax residents (allowances and the tax differential are not taxed).

Do you think that sharing best practices between EU countries in this area could assist in making progress in tackling individuals' cross-border tax problems?

- Yes
- No

V. Your opinion on actions that could be undertaken at EU level

Do you think that common solutions to address tax obstacles faced by individuals at EU level would be useful?

Yes

No

Which types of solution could be useful at EU level?

Providing information that is common to the whole of the EU (such as a web site)

Developing standard tax forms to be used in all EU countries for similar transactions/reporting

Adopting a taxpayers' code specifying rights and obligations of tax payers in cross-border situations

Introducing rules such as binding arbitration for cases where individuals are being doubly taxed and the EU countries involved would otherwise not agree on the interpretation of their treaties for the avoidance of double taxation

Rules for closer cooperation between EU countries' tax authorities.

Other (please specify) (max 500 words)

A forum for discussion between Member State tax authorities and companies, to exchange experience and information on tax practices and associated difficulties (for example cost of tax equalisation) and to ensure a better understanding of additional costs associated with sending employees on cross-border assignments, which has a negative impact on the competitiveness of providing services cross-border and increases cost and complexity for mobile employees.