

AmCham EU's response to the public consultation on improving double taxation dispute resolution mechanisms

CONSULTATION RESPONSE

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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 more than €2 trillion in 2015, directly supports more than 4.3 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

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09 May 2016

1. Information about you

*** Are you replying as:**

- ☐ a private individual
☒ an organisation or company
☐ a public authority or an international organisation
☐ other

*** Your name (first and last name if you are responding as an individual):**

American Chamber of Commerce to the European Union (AmCham EU)

Contact email address:

eje@amchameu.eu

*** Is your organisation included in the Transparency Register?**

- ☒ Yes
☐ No

If so, please indicate your register ID Number:

5265780509-97

*** Type of organisation**

- | | |
|--|--|
| <input type="checkbox"/> Academic institution | <input type="checkbox"/> Consultancy, law firm |
| <input checked="" type="checkbox"/> Industry association | <input type="checkbox"/> Non-governmental organisation |
| <input type="checkbox"/> Trade union | <input type="checkbox"/> Company, SME, micro-enterprise, sole trader |
| <input type="checkbox"/> Consumer organisation | <input type="checkbox"/> Media |
| <input type="checkbox"/> Think tank | <input type="checkbox"/> Other |

Please describe the interest your represent (kind, size, etc.)

Speaks for 164 American companies committed to Europe on trade, investment and competitiveness.

*** Where are you based?**

- | | |
|---|---|
| <input type="checkbox"/> Austria | <input checked="" type="checkbox"/> Belgium |
| <input type="checkbox"/> Bulgaria | <input type="checkbox"/> Cyprus |
| <input type="checkbox"/> Czech Republic | <input type="checkbox"/> Germany |
| <input type="checkbox"/> Denmark | <input type="checkbox"/> Estonia |
| <input type="checkbox"/> Greece | <input type="checkbox"/> Spain |
| <input type="checkbox"/> Finland | <input type="checkbox"/> France |
| <input type="checkbox"/> Hungary | <input type="checkbox"/> Croatia |
| <input type="checkbox"/> Ireland | <input type="checkbox"/> Italy |
| <input type="checkbox"/> Lithuania | <input type="checkbox"/> Luxembourg |

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- | | |
|--|---|
| <input type="checkbox"/> Latvia | <input type="checkbox"/> Malta |
| <input type="checkbox"/> Netherlands | <input type="checkbox"/> Poland |
| <input type="checkbox"/> Portugal | <input type="checkbox"/> Romania |
| <input type="checkbox"/> Sweden | <input type="checkbox"/> Slovenia |
| <input type="checkbox"/> Slovak Republic | <input type="checkbox"/> United Kingdom |
| <input type="checkbox"/> Other | |

*** Do you represent interests or carry out your activity at:**

- ☐ National level (your country only)
☒ EU level (in one or more other EU Member States)
☐ International level (including EU)
☐ International level (excluding EU)

*** Important notice on the publication of responses**

* Please note: The European Commission will prepare a report summarizing the responses. Contributions received are thus intended for publication on the Commissions website (see specific privacy statement).

Do you agree to your contribution being published?

- ☒ Yes, I consent to all of my answers being published under my name (name of your organization/company/public authority or your name if you reply as an individual)
☐ Yes, I consent to all of my answers/personal data being published anonymously
☐ No, I do not want my response to be published

*** I declare that none of the information I provide in this consultation is subject to copyright restrictions**

- ☒ Yes
☐ No

2. Your opinion

Case considered: an enterprise is doing business in the Member State where it is resident and in another Member State. Tax is imposed by both Member States on the income from this same cross border business activity.

*** 2.1. What do you think about how double taxation disputes can be solved at best?**

* Please note that one or several statements can be ticked below

- ☐ a) The possibility for taxpayers to appeal in front of domestic tax courts in Member States for obtaining a judgment on the correct application of the tax law of the respective Member States is sufficient although such appeals do not address the issue of double taxation. *Double taxation resulting from differences in domestic tax laws is a risk when doing cross border business.*

☐ b) In the European Union Internal Market, there should be measures in place allowing Member States to consult and agree/not agree with each other. *The possibility for the Member States to amicably agree to solve a double taxation dispute based on a mutual agreement procedure under their existing tax treaties network is sufficient even if these double taxation treaties do not guarantee that double taxation is removed.*

☒ c) In the European Union Internal Market measures have to be in place in such a case that ensure that double taxation is removed. The mechanisms under the existing tax treaties network should be strengthened and made more efficient, in order to oblige the Member States to conclude a final and effective agreement on the elimination of the double taxation within an appropriate time period (for instance, 2 years). The existing mechanisms should focus on ensuring a direct effect of the decision eliminating the double taxation for the taxpayers and guarantee recourse and appeal right in case of non effectiveness)

☐ d) No opinion

☐ e) Other opinion

If you have an other opinion, how do you think could double taxation disputes be solved best? (200 characters maximum)

2.2 I/my organisation personally experienced situations where I was impacted negatively by a double taxation case in the past 4 years

☐ Yes

☒ No

2.3 Do you think the dispute resolution mechanisms currently available in the EU (e.g. DTC or AC) are sufficient as regards scope, enforceability and efficiency?

* As regards the scope

☐ Fully sufficient

☐ A good basis needing partial improvement

☐ I have no opinion

☐ Just a starting point

☒ Not sufficient

☐ I don't know

* As regards the enforceability

☐ Fully sufficient

☐ A good basis needing partial improvement

☐ I have no opinion

☐ Just a starting point

☒ Not sufficient

☐ I don't know

* As regards the efficiency

☐ Fully sufficient

☐ A good basis needing partial improvement

☐ I have no opinion

☐ Just a starting point

☒ Not sufficient

☐ I don't know

2.4 What do you think are the *impacts* of double taxation arising in the EU?

IMPACTS

* Double taxation can create barriers for cross border transactions and business

☒ I completely agree ☐ I somewhat agree ☐ I have no opinion ☐ I completely disagree
☐ I don't know

* Double taxation has a negative effect on the diversity and quality of goods and services available in my country

☒ I completely agree ☐ I somewhat agree ☐ I have no opinion ☐ I completely disagree
☐ I don't know

* Double taxation can drive investment away from my country

☒ I completely agree ☐ I somewhat agree ☐ I have no opinion ☐ I completely disagree
☐ I don't know

* Double taxation can prevent foreign investors from coming to my country

☒ I completely agree ☐ I somewhat agree ☐ I have no opinion ☐ I completely disagree
☐ I don't know

* Double taxation will protect the economy in my country from competition with foreign enterprises

☐ I completely agree ☐ I somewhat agree ☐ I have no opinion ☒ I completely disagree
☐ I don't know

* Double taxation can in long term be detrimental to economic growth and creation of jobs

☒ I completely agree ☐ I somewhat agree ☐ I have no opinion ☐ I completely disagree
☐ I don't know

Other impacts of double taxation you would like to indicate: (500 characters maximum)

Double taxation is a barrier to investment that inhibits the effectiveness of the internal market and discourages investment between and into Member States. This has a negative impact on growth, job creation and welfare within the single market and can also make European businesses less competitive than international competitors.

3. The objectives

Do you want the EU to pursue the following *objectives* to achieve effective elimination of double taxation for business transactions?

OBJECTIVES

* Ensuring recourse and access to an effective dispute resolution mechanism for all double taxation cases impacting business in the income tax area

☒ I completely agree ☐ I somewhat agree ☐ I have no opinion ☐ I completely disagree
☐ I don't know

* Reducing costs of tax administrations

☒ I completely agree ☐ I somewhat agree ☐ I have no opinion ☐ I completely disagree
☐ I don't know

* Safeguarding competitiveness of enterprises in the EU with a focus on reducing costs of dispute and litigation procedures for them

☒ I completely agree ☐ I somewhat agree ☐ I have no opinion ☐ I completely disagree
☐ I don't know

* Ensuring a timely resolution of double taxation disputes

☒ I completely agree ☐ I somewhat agree ☐ I have no opinion ☐ I completely disagree
☐ I don't know

* Ensuring a fair and predictable tax system by promoting a EU wide coherent approach of treatments of dispute resolution

☒ I completely agree ☐ I somewhat agree ☐ I have no opinion ☐ I completely disagree
☐ I don't know

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

☐ I completely agree ☐ I somewhat agree ☒ I have no opinion ☐ I completely disagree
☐ I don't know

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

☒ I completely agree ☐ I somewhat agree ☐ I have no opinion ☐ I completely disagree
☐ I don't know

* Contributing to a business friendly tax environment to attract investment and jobs

☒ I completely agree ☐ I somewhat agree ☐ I have no opinion ☐ I completely disagree
☐ I don't know

Would you add other objectives in the context of double taxation? Please explain briefly (500 characters maximum)

4. EU Action

4.1 Do you want the EU to pursue the following directions?

EU ACTION

* There is no need for action at the EU level, as the existing situation is satisfactory and will continue to be in short and long term

☐ I completely agree ☐ I somewhat agree ☐ I have no opinion ☒ I completely disagree
☐ I don't know

* The EU should limit itself to encourage MS to adopt mechanisms in their bilateral relations

☐ I completely agree ☐ I somewhat agree ☐ I have no opinion ☒ I completely disagree
☐ I don't know

* The EU should build on the existing mechanisms for double taxation dispute resolution already

agreed on EU level e.g. the EU Arbitration Convention/bilateral DTC and address those areas where they are inefficient

☐ I completely agree ☒ I somewhat agree ☐ I have no opinion ☐ I completely disagree
☐ I don't know

* The EU should ensure that the taxpayer should have a stronger role in the inter State double taxation dispute resolution mechanism

☒ I completely agree ☐ I somewhat agree ☐ I have no opinion ☐ I completely disagree
☐ I don't know

* The EU should ensure that double taxation dispute resolution mechanisms are designed in a way that they guarantee the elimination of double taxation

☒ I completely agree ☐ I somewhat agree ☐ I have no opinion ☐ I completely disagree
☐ I don't know

* A new and comprehensive legal tool should be developed by the EU to ensure that double taxation disputes are resolved

☐ I completely agree ☒ I somewhat agree ☐ I have no opinion ☐ I completely disagree
☐ I don't know

* The EU initiative should be compatible with mechanisms available at international level

☒ I completely agree ☐ I somewhat agree ☐ I have no opinion ☐ I completely disagree
☐ I don't know

Do you think there is other EU Action to be considered? (200 characters maximum)

4.2 What is your view about possible options?

Option A i): Improve the efficiency of bi- and multilateral instruments

A i) In this option, the EU would encourage Member States to adopt or revise the mechanisms for double taxation dispute resolution in their double tax treaties in accordance with the conclusions reached during the monitoring process of the EU Arbitration Convention at the level of the EU Joint Transfer Pricing Forum and the OECD BEPS Action 14, including an arbitration clause.

In your opinion, would option A i) meet the general objectives of scope, enforceability and efficiency?

* Scope

☐ Will fully meet the objective ☒ Will partly meet the objective ☐ Will not meet the objective
☐ No opinion ☐ I don't know

* Enforceability

☐ Will fully meet the objective ☒ Will partly meet the objective ☐ Will not meet the objective
☐ No opinion ☐ I don't know

*** Efficiency**

- ☐ Will fully meet the objective ☒ Will partly meet the objective ☐ Will not meet the objective
☐ No opinion ☐ I don't know

Option A ii): Improve the efficiency of bi- and multilateral instruments

In this option, the EU would encourage Member States to introduce a specific enforcement mechanism in their tax treaties which refers to Article 273 of the TFEU and gives power to the CJEU jurisdiction to ultimately decide on any remaining double-taxation dispute between EU Member States after a limited period of time. An example of such a mechanism can be found in [Art. 25 of the German-Austrian tax treaty](#)

In your opinion, would option A ii) meet the general objectives of scope, enforceability and efficiency?

*** Scope**

- ☐ Will fully meet the objective ☒ Will partly meet the objective ☐ Will not meet the objective
☐ No opinion ☐ I don't know

*** Enforceability**

- ☐ Will fully meet the objective ☒ Will partly meet the objective ☐ Will not meet the objective
☐ No opinion ☐ I don't know

*** Efficiency**

- ☐ Will fully meet the objective ☒ Will partly meet the objective ☐ Will not meet the objective
☐ No opinion ☐ I don't know

Option B: Enforced, effective and broader dispute resolution mechanisms

A requirement for EU Member States to implement measures that foresee reaching a decision or a mutual agreement on eliminating a double taxation case within a given time limit (e.g. 2 years) after a justified claim of a taxpayer. If Member States fail within this period – including by denying access to the procedure - a fast-track recourse will be open to the same taxpayer with his national court to take steps, so that Member States are requested to appoint an arbitration or mediation body to be in charge of taking a final decision on the elimination of the disputed double taxation, binding towards the Member States and

- a requirement that EU Member States who have agreed in bilateral treaties with a third country or another Member States to apply a more effective dispute resolution mechanism (e.g. arbitration), will be obliged to apply the same mechanism with all the other Member States (Most Favoured Nation clause).

In your opinion, would option B meet the general objectives of scope, enforceability and efficiency?

*** Scope**

- ☒ Will fully meet the objective ☐ Will partly meet the objective ☐ Will not meet the objective
☐ No opinion ☐ I don't know

* Enforceability

- ☒ Will fully meet the objective ☐ Will partly meet the objective ☐ Will not meet the objective
☐ No opinion ☐ I don't know

* Efficiency

- ☒ Will fully meet the objective ☐ Will partly meet the objective ☐ Will not meet the objective
☐ No opinion ☐ I don't know

Option C: A comprehensive new EU legal instrument

A new comprehensive EU legal instrument providing for an effective elimination of double taxation at EU level. This would foresee specific and targeted substance-based solutions for all identified conflicting tax legislations triggering double taxation for cross-border situations within the scope of this directive, and would contain a dispute resolution mechanism which ensures that disputes on the interpretation of these provisions are solved with legal certainty as well as guaranteed recourses before court given to taxpayers.

In your opinion, would option C meet the general objectives of scope, enforceability and efficiency?

* Scope

- ☒ Will fully meet the objective ☐ Will partly meet the objective ☐ Will not meet the objective
☐ No opinion ☐ I don't know

* Enforceability

- ☒ Will fully meet the objective ☐ Will partly meet the objective ☐ Will not meet the objective
☐ No opinion ☐ I don't know

* Efficiency

- ☒ Will fully meet the objective ☐ Will partly meet the objective ☐ Will not meet the objective
☐ No opinion ☐ I don't know

4.3 Way forward

In your opinion, would the dispute resolution mechanisms discussed in Section 4 be appropriate for double taxation disputes arising in other areas of income taxation e.g. personal income tax (cost benefit ratio)?

* Option A i)

- ☐ Fully appropriate ☐ Partly appropriate ☐ I have no opinion ☒ Not appropriate
☐ I don't know

* Option A ii)

- ☐ Fully appropriate ☐ Partly appropriate ☐ I have no opinion ☒ Not appropriate
☐ I don't know

* Option B

☒ Fully appropriate ☐ Partly appropriate ☐ I have no opinion ☐ Not appropriate
☐ I don't know

* Option C

☒ Fully appropriate ☐ Partly appropriate ☐ I have no opinion ☐ Not appropriate
☐ I don't know

5. Additional information

Please note that you have the opportunity to upload documents to further support or illustrate your views.

These documents will not be published and be used for background reading, where necessary.

The analysis of this consultation will be based on the responses to the questions.

If you would like to provide us with further information, please upload here