

# Consultation on Improving Double Taxation Dispute Resolution Mechanisms

Fields marked with \* are mandatory.

## Introduction

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**Please note:** In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact [TAXUD-UNIT-D2@ec.europa.eu](mailto:TAXUD-UNIT-D2@ec.europa.eu)

More information:

- on this [consultation](#)
- on the [protection of personal data regime](#) for this consultation

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Member States have sovereignty in designing their own direct tax systems and procedures. Consequently, 28 different national tax regimes can potentially apply to the same transaction in the European Union (EU) and may result in the imposition of comparable taxes by two (or more) tax jurisdictions in respect of the same taxable income or capital (Double Taxation). For example, a company being resident in a Member State can perform activities in a second Member State, which characterize a Permanent Establishment and be taxable in the two Member States on the same income deriving from the Permanent Establishment. Another example would be a company located in a third State and doing business in several Member States and being taxed on the same income by these Member States.

So far, the EU Member States are trying to resolve double taxation cases based on bilateral double tax conventions (DTC) or multilateral conventions. The OECD Model Tax Convention on Income and on Capital (MTC) is the most frequent tool used in this field. DTCs assign taxing rights between the Residence State and the Source State. DTCs regularly provide for a mutual agreement procedure (MAP) to solve differences arising between States in their application, whereby the corresponding competent authorities shall discuss the issue to solve it but are under the basic form of this procedure not bound to reach a solution. In its 2008 update, the MTC suggest supplementing the MAP with a clause that requires agreeing on a solution by way of arbitration.

The uptake of such arbitration clauses in DTC is until now rather limited. In the EU, the MS already in the 1990th have agreed a multilateral convention foreseeing such a process (the EU Arbitration Convention "AC") which, however, applies only to a limited area of corporate taxation (transfer pricing and profit attribution to permanent establishments).

## Recent developments

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The issue of double taxation of business activities has continuously gained importance. The integration of national economies and markets has increased substantially in recent years, putting a strain on the international tax rules which were designed more than a century ago. Opportunities for cross border tax avoidance and evasion resulting from this situation need to be closed. A further aspect to be considered is the increased attention in public debate about taxation, especially in the context of corporate tax and Multinational Enterprise Groups (MNEs),

With the [Anti Tax Avoidance Package](#) which was published just recently in the context of the [June 2015 Action Plan Action Plan for Fair and Efficient Corporate Taxation in the EU](#), the EU Commission calls on Member States to take a stronger and more coordinated stance against companies that seek to avoid paying their fair share of tax and to implement the international standards against base erosion and profit shifting.

This most recent context of measures taken to fight tax evasion and avoidance, as well as the ongoing globalisation and digitalization of the economy require to consider the obstacle of double taxation with even greater attention given a possible exponential increase of tax disputes. Double taxation is in itself a source of legal uncertainty for taxpayers as frequently pointed out by business associations and representatives of taxpayers and can have impact on business decisions, mobility and functioning of the market.

## Why it matters?

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Double or multiple taxation results in a higher tax burden, cash-flow disadvantages, higher administrative and compliance costs and burdens. This may deter affected citizens from taking full advantage of their right to operate freely across borders in the EU's Internal Market. Entrepreneurs in the EU may need to comply with up to twenty-eight different sets of rules. Taking into account that these companies increasingly target the EU as one market, such a situation often conflicts with economically efficient business plans and structures. The multiplicity of tax laws, DTCs and practices entail substantial compliance costs and represent a barrier to cross-border economic activity. If combined with limited solutions to resolve double taxation cases, the negative consequences become an unwelcome permanent feature that necessitates attention.

Therefore there is still a need to find a balance between the legitimate exercise by Member States of their national sovereignty in direct taxation, including by establishing measures to prevent tax avoidance and evasion, and the requirement to remove barriers to cross-border economic activity in the EU's Internal Market.

## Previous consultation and research

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A public consultation on double taxation conventions and the internal market was launched by the Commission in 2010 ([the 2010 public consultation](#)). The consultation confirmed that despite the advantageous situation in the EU as regards the availability of DTC in the area of direct taxation, the instruments to relieve double taxation were regarded as still not functioning properly. The consultation identified that most of the issues arise in the context of business taxation.

This result of the 2010 public consultation is in line with the findings of the OECD in the context of its [Project on Dispute resolution](#), which resulted in updating the [OECD MTC](#) with an arbitration provision applicable to all disputes in July 2008. However, the arbitration provisions are not regularly inserted into the double tax conventions. The issue therefore persists as confirmed in the context of the OECD project on Base Erosion and profit shifting, [Action 14, "Making Dispute Resolution Mechanisms more Effective"](#).

Based on the outcome of the [2010 public consultation](#) the Commission undertook various measures to examine the scope and magnitude of the problems and, particularly, what exactly prevents the existing double taxation dispute resolution mechanisms from a smooth functioning. Action taken by the Commission as a follow up to the public Consultation were

- November 2011: [Communication from the Commission on Double taxation in the Single Market \(COM \(2011\) 712 final\)](#)
- March 2012: Change of [Statistics on functioning of the EU Arbitration Convention](#)
- December 2012: Organisation of a inter governmental seminars on double taxation issues and insufficiency of international agreements
- March 2013: Launch of Study to identify and describe most frequent double taxation cases in the internal market (delivered in June 2013)
- April 2013: discussion incl. questionnaires to MS and stakeholder meetings
- October 2013 to March 2015: Discussion in EU Joint Transfer Pricing Forum, (a Commission Expert Group) on improving the functioning of the Arbitration Convention
- June 2014: creation of Expert Group on cross border tax obstacles for individuals within the EU
- June 2014: creation of Expert Group on inheritance tax obstacles within the EU
- March 2015: Report of the EU JTPF on [Improving the functioning of the Arbitration Convention](#).

## Why business focus?

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Given the relevance of the issue in the context of business taxation which persists despite the broad availability of DTC and the Arbitration Convention, the Commission decided to first focus on addressing the shortcomings identified for the situation of business taxation. It will then assess whether the solutions under reflection would be appropriate for being extended to other areas of taxation.

The corporate taxpayers who took part in the 2010 consultation reported that the amounts involved in double taxation disputes, amplified by administrative and legal costs, are sometimes so high that they create serious economic risks for companies.

Accordingly, the Commission included the objective of improving double taxation dispute resolution mechanisms in its Communication of an [Action Plan for a Fair and Efficient Corporate Tax System in the EU](#). The Action Plan focusses strongly on measures to avoid base erosion and profit shifting ("BEPS"), but it is also recognised that these efforts must be complemented by improving mechanisms for the elimination of double taxation to ensure certainty and predictability for business as double taxation in the Single Market has a negative impact on cross border investment and leads to economic distortions and inefficiencies.

The Action Plan foresees that in order to create greater certainty for business the Commission will propose improvements to the current mechanisms to resolve double taxation disputes in the EU, by summer 2016. The aim is to create a coordinated EU approach to dispute resolution, with clearer rules and more stringent timelines, building on the systems already in place. This will inter alia review how the scope of advanced mechanisms (e.g. the EU Arbitration Convention) can be extended (broaden the scope) within the Union and how to make the existing mechanisms enforceable (i.e. be effective as regards the goal of solving double taxation disputes) and more efficient (i.e. achieving this goal in an optimal way as regards time, costs and burden for all stakeholders) to improve the functioning of the Single Market.

In summary, the key objectives of the initiative focus on **Scope, Enforceability and Efficiency**.

## Purpose of this consultation

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This consultation wants to gather all stakeholders' views in particular on:

- the relevance of removing double taxation for enterprises operating cross border;
- the objectives which are suggested to be pursued at the EU level and which are aiming at fulfilling the Action Plan commitment of an improved dispute resolution mechanism;
- the solutions which are discussed.

## Glossary

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### **Arbitration**

According to the OECD glossary of tax terms, this term is used for the determination of a dispute by the judgment of one or more persons, called arbitrators, who are chosen by the parties and who normally do not belong to a normal court of competent jurisdiction. A specific clause on arbitration is provided for by the OECD Model Tax Convention (Treaty) under Article 25 of the said OECD Model Tax Convention (Treaty).

### **Associated Enterprises**

According to the OECD glossary of tax terms, generally speaking, enterprises are associated where the same persons participate directly or independently in the management, control or capital of both enterprises, i.e. both enterprises are under common control.

### **BEPS**

Base Erosion and Profit Shifting. The term is hereafter referred to in the context of the OECD Base Erosion and Profit Shifting 15-point Action Plan published in 2013 (see OECD (2013), Action Plan on Base Erosion and Profit Shifting, [OECD BEPS Action Plan](#))

### **Double taxation**

In the Commission Communication on Double Taxation in the Single Market (C(2011)712 final), double taxation is defined as the imposition of comparable taxes by two (or more) tax jurisdictions in respect of the same taxable income or capital. Although double taxation can also occur in purely

domestic situations, in particular as far as it concerns economic double taxation, this Consultation focuses on cross-border situations only.

Traditionally, double taxation is divided into two kinds, juridical double taxation and economic double taxation. In the case of juridical double taxation two comparable taxes are applied to the same taxpayer in respect of the same income or capital. Generally the expression economic double taxation is used when different taxpayers are taxed in respect of the same income or capital.

### **Double Tax Conventions, DTC (treaties)**

According to the OECD glossary of tax terms, a Double Tax Convention (Treaty) is defined as an agreement between two (or more) countries for the avoidance of double taxation. A tax treaty may be titled a Convention, Treaty or Agreement.

### **EU Arbitration Convention, AC**

The term "Arbitration Convention" shall be construed hereafter as the [Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises](#), which is a multilateral instrument establishing a procedure to resolve disputes where double taxation occurs between enterprises of different Member States as a result of an upward adjustment of profits of an enterprise of one Member State (transfer pricing and allocation of profit to Permanent Establishments)..

### **Model Tax Conventions, MTC (treaties)**

According to the OECD glossary of tax terms, a model tax convention (treaty) is designed to streamline and achieve uniformity in the allocation of taxing right between countries in cross-border situations. Model tax treaties developed by OECD and UN are widely used and a number of countries have their own model treaties. When it is referred to "Model Tax Convention(s)" hereafter, it should be narrowly construed as the OECD Model Tax Convention(s).

### **Multilateral Instrument or Agreement**

A written agreement between three or more sovereign States establishing the rights and obligations between the parties. It can refer hereafter to a specific clause in a multilateral convention (treaty) or to the multilateral convention (treaty) itself.

### **Mutual Agreement Procedure (MAP)**

A means through which tax administrations consult to resolve disputes regarding the application of double tax conventions. This procedure, described and authorized notably by Article 25 of the OECD Model Tax Convention, can be used to eliminate double taxation that could arise from a transfer pricing adjustment.

### **Permanent Establishment**

According to the OECD glossary on tax terms the term is used in double taxation agreement (although it may also be used in national tax legislation) to refer to a situation where a non-resident entrepreneur is taxable in a country; that is, an enterprise in one country will not be liable to the income tax of the other country unless it has a "permanent establishment" through which it conducts business in that other country. Even if it has a PE, the income to be taxed will only be to the extent that it is 'attributable' to the PE

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\* Are you replying as:

- a private individual
- an organisation or company
- a public authority or an international organisation
- Other

if other, please specify

Educational and Representative Body

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

Irish Tax Institute

Contact email address:

*The information you provide here is for administrative purposes only and will not be published*

alucey@taxinstitute.ie

\* Is your organisation included in the Transparency Register?

*(If your organisation is not registered, we invite you to register here, although it is not compulsory to be registered to reply to this consultation. Why a transparency register?)*

- Yes
- No

If so, please indicate your register ID Number:

08421509356-44

\* Type of organisation

- Academic institution
- Consultancy, law firm
- Industry association
- Non-governmental organisation
- Trade union
- Company, SME, micro-enterprise, sole trader
- Consumer organisation
- Media
-

Think tank

Other

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

*100 character(s) maximum*

Educational and Representative Body

\* Where are you based?

- Austria
- Belgium
- Bulgaria
- Cyprus
- Czech Republic
- Germany
- Denmark
- Estonia
- Greece
- Spain
- Finland
- France
- Hungary
- Croatia
- Ireland
- Italy
- Lithuania
- Luxembourg
- Latvia
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Sweden
- Slovenia
- Slovak Republic
- United Kingdom
- Other

If other country, please specify

\* Do you represent interrests 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)

**PLEASE NOTE: The following information is requested if you are a company, SME, or sole trader**

Additional information requested if you are a company, SME or sole trader:

Is your enterprise a multinational enterprise (group with establishments in more than one country)

- No
- Yes

If yes, please specify the countries in which you are active or were active during the last 4 years (more than one choice is possible)

- Austria
- Belgium
- Bulgaria
- Cyprus
- Czech Republic
- Germany
- Denmark
- Estonia
- Greece
- Spain
- Finland
- France
- Hungary
- Croatia
- Ireland
- Italy
- Lithuania
- Luxembourg
- Latvia
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Sweden
- Slovenia
- Slovak Republic
- United Kingdom
- Other



Number of employees

- self-employed
- 1 - 9
- 10 - 49
- 50 - 249
- 250-499
- 500 or more

Turnover

- 0 - €10 million
- 10 - €40 million
- 40 - €750 million
- more than €750 million

Main field of activity or sector

- Aeronautics and Space
- Agrofood
- Automotive Industry and Services
- Pharmaceuticals and Healthcare
- Construction
- Transport and Logistics
- Electrical and Electronic Engineering Industries
- Chemicals
- Textile
- Banking
- Consultancy
- Other

if "other", please specify

Please provide your [NACE](#) code

**PLEASE NOTE: The following additional information is requested if you are a public authority:**

\*Type of public authority

- International or European organisation
- Regional or local authority
- Government or Ministry
- Regulatory authority, Supervisory authority or Central bank
- Other public authority

## \* 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

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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 character(s) maximum

Concerning option 'C', we agree that existing tax treaties should be strengthened through the introduction of a binding arbitration clause and more prescribed provisions on MAPs.

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?

	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 scope	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*As regards the enforceability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*As regards efficiency	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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

### IMPACTS

	I completely agree	I somewhat agree	I have no opinion	I somewhat disagree	I completely disagree	I don't know
*Double taxation can create barriers for cross border transactions and business	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Double taxation has a negative effect on the diversity						

and quality of goods and services available in my country	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Double taxation can drive investment away from my country	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Double taxation can prevent foreign investors from coming to my country	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Double taxation will protect the economy in my country from competition with foreign enterprises	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Double taxation can in long term be detrimental to economic growth and creation of jobs	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other impacts of double taxation you would like to indicate:

*500 character(s) maximum*

Where double tax does arise, it is important that disputes between tax authorities are resolved in a timely manner. Failure to do so can adversely impact the day-to-day operations of companies in terms of;

- Cash-flow
- Uncertainty on future tax payments / provisions
- Increased administrative costs
- Uncertainty on earnings per share and consequential impact on investor decisions.

In general, double tax inhibits cross-border trade and ultimately this will make the EU less competitive

### 3. The objectives

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In case you are an affiliate, please provide the country where your headquarter is established

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

**OBJECTIVES**

	I completely agree	I somewhat agree	I have no opinion	I somewhat disagree	I completely disagree	I don't know
*Ensuring recourse and access to an effective dispute resolution mechanism for all double taxation cases impacting business in the income tax area	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Reducing costs of tax administrations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Safeguarding competitiveness of enterprises in the EU with a focus on reducing costs of dispute and litigation procedures for them	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

<p>*Ensuring a timely resolution of double taxation disputes</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*Ensuring a fair and predictable tax system by promoting a EU wide coherent approach of treatments of dispute resolution</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*Ensuring transparency by publishing main parts of the double taxation dispute cases/decisions</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*Safeguarding the financial interest of the Member States by improving collection of the tax deemed due</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>*Contributing to a business friendly tax environment to attract</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

investment and jobs						
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Would you add other objectives in the context of double taxation? Please explain briefly

*500 character(s) maximum*

All OECD countries have agreed to improve their MAP regimes on foot of BEPS Action 14 and the main objective of the EU should be to support Member States in this process. This will require an investment in MAP resources so it is difficult to see how reducing the cost of tax administrations would be a feasible objective of the EU.

Another objective should be to ensure more taxpayer involvement in MAPs, e.g. updating taxpayers on the progress of MAPs and allowing them to compel arbitration.

## 4. EU Action

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

##### EU ACTION

	I completely agree	I somewhat agree	I have no opinion	I somewhat disagree	I completely disagree	I don't know
*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.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*The EU should limit itself to encourage MS to adopt mechanisms in their bilateral relations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*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	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

DTC and address those areas where they are inefficient.						
*The EU should ensure that the taxpayer should have a stronger role in the inter State double taxation dispute resolution mechanism.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*The EU should ensure that double taxation dispute resolution mechanisms are designed in a way that they guarantee the elimination of double taxation	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*A new and comprehensive legal tool should be developed by the EU to ensure that double taxation disputes are resolved.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*The EU initiative should be						

compatible with mechanisms available at international level	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Do you think there is other EU Action to be considered?

200 character(s) maximum

The EU should encourage Member States to participate in the finalisation of BEPS Action 15 and reach consensus on binding arbitration. An EU Instrument could also work but only if designed carefully.

#### 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?

	Will fully meet the objective	Will partly meet the objective	Will not meet the objective	No opinion	I don't know
*Scope	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Enforceability	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Efficiency	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

##### 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?

	Will fully meet the objective	Will partly meet the objective	Will not meet the objective	No opinion	I don't know
*Scope	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Enforceability	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Efficiency	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

**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?

	Will fully meet the objective	Will partly meet the objective	Will not meet the objective	No opinion	I don't know
*Scope	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Enforceability	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Efficiency	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

**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?

	Will fully meet the objective	Will partly meet the objective	Will not meet the objective	No opinion	I don't know
*Scope	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Enforceability	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

*Efficiency	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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### 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)?

	Fully appropriate	Partly appropriate	I have no opinion	Not appropriate	I don't know
*Option A i)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Option A ii)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Option B	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Option C	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## 5. Additional Information

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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

Please upload your file

**0e988578-aed1-4e6d-b148-b1e69ea0fa34/Irish\_Tax\_Institute\_-\_Supplementary\_Comments.pdf**

### Contact

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**Irish Tax  
Institute**

*Leaders in Tax*

**Irish Tax Institute (Transparency Register: 08421509356-44)**

**European Commission Consultation on Improving Double Taxation Dispute  
Resolution Mechanisms**

***Supplementary Comments which should be read in conjunction with our  
response to the questionnaire***

**OECD's Multilateral Instrument**

The Irish Tax Institute is very supportive of the minimum standard put forward by the OECD in BEPS Action 14 and we recognise that the European Commission has played an important role in developing these proposals.

We believe that improvements to the current dispute resolution mechanism can be best achieved by strengthening existing tax treaties and, if carefully designed to accord with other international dispute resolution mechanisms, by taking some complementary action at an EU level. Dispute resolution will be one of the key elements addressed in the OECD's Multilateral Instrument which is currently being developed by an OECD working group. This instrument is expected to be finalised by the end of 2016 and a key objective of the EU should be to encourage Member States to participate in this working group.

**EU Action**

While we expect a workable solution with widespread international support to be developed by the OECD over the coming years, it is important that taxpayers in Member States can access an effective dispute resolution mechanism in the interim. We welcome the European Commission's efforts in this regard.

***New EU Instrument***

We note that Option C in the questionnaire proposes "*a new comprehensive EU legal instrument providing for an effective elimination of double taxation at EU level*". The Institute believes that such a mechanism could help to resolve double tax disputes if designed carefully and if it contains the following critically important elements;

- It must be a voluntary mechanism which taxpayers could opt to initiate
- It must be easily accessible and result in the effective and timely resolution of disputes for taxpayers
- It must be compatible with other international initiatives
- Disputes should be heard in private

It is unclear from the questionnaire how the role of the CJEU would interact (if at all) with any new EU instrument. Double tax treaties are not instruments of EU law so we do not believe



that the CJEU is necessarily best placed to be the ultimate arbitrator under these proposals. The Institute would instead favour the establishment of an EU arbitration panel which would be made up of individuals with more relevant skills in the areas of tax, law and arbitration. We believe that this would lead to a more effective process which would encourage Member States to support the introduction of any new EU instrument.

A great deal of questions remain about the instrument and we would need to see further details before endorsing any such proposals. It is imperative that a separate and detailed public consultation be undertaken by the Commission on the design of legislation and any new EU arbitration forum before any final decisions are taken.

As with all tax matters, it is important that any instrument would be subject to unanimous agreement by all 28 Member States before being adopted.

### ***EU Arbitration Convention***

The EU Arbitration Convention has proved useful to date (if not used as widely as perhaps it could be) and consideration should be given to broadening its remit beyond transfer pricing disputes. We have also had feedback from members that there can be uncertainty around the application of the time limits set-out in the Convention. It is important that there are clearly defined provisions around the application of the Convention.