Tax dispute resolution mechanisms in the European Union

2016/0338(CNS) - 25/10/2016 - Legislative proposal

PURPOSE: to establish an effective dispute resolution mechanism regarding double taxation for the proper functioning of the internal market.

PROPOSED ACT: Council Directive.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting Parliament but without being obliged to follow the latter's opinion.

BACKGROUND: one of the main problems encountered by businesses operating across borders is double taxation. There are already mechanisms in place that deal with the resolution of double taxation disputes. These are the mutual agreement procedures that are provided in double taxation conventions (DTCs) entered into by Member States as well as in the Union Arbitration Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises. The Commission considers that **these mechanisms should be improved** with respect to access for taxpayers to those mechanisms, coverage, timeliness and conclusiveness. Moreover, the traditional methods of resolving disputes no longer fully fit with the complexity and risks of the current global tax environment.

In its communication of June 2015 on an action plan for a fair and efficient corporate tax system in the EU, the Commission indicated that its proposal for a Common Consolidated Corporate Tax Base (CCCTB), which will be adopted on the same day as this proposal, is a major step towards a better tax environment for business.

IMPACT ASSESSMENT: the preferred option is to **set up a mandatory binding effective dispute resolution mechanism,** i.e. a mutual agreement procedure combined with an arbitration phase, with a clear time limit and an obligation of result for all Member States.

In terms of economic impact, the proposal will reduce the compliance and litigation burden for companies operating in the EU as regards their cross-border activities.

CONTENT: the draft directive aims to **improve existing double taxation dispute resolution mechanisms in the EU** in order to establish a fair and efficient tax system that increases legal certainty. It focuses on business and companies, the main stakeholders affected by double taxation situations. It **builds on the existing Union Arbitration Convention,** which already provides for a mandatory binding arbitration mechanism, but **broadens its scope** to all cross-border situations subject to double income tax imposed on business profits. However, it adds an **explicit obligation regarding results** for Member States as well as a clearly **defined time limit**. On the other hand, situations that involve double non-taxation or cases of fraud, wilful default or gross-negligence are excluded.

In line with the Union Arbitration Convention, the draft Directive allows for a **Mutual Agreement Procedure**, initiated by the complaint of the taxpayer, under which the Member States shall freely cooperate and reach an agreement on the double taxation dispute **within 2 years.** If the Mutual Agreement Procedure fails, it **automatically** leads to a dispute resolution procedure with the issuance of a final mandatory binding decision by the competent authorities of the Member States involved.

BUDGETARY IMPLICATIONS: the estimated impact of the proposal on the Union budget is **EUR 0.097 million** (human resources and administrative expenditure). This will be met within available resources.