European Parliament

Double taxation dispute resolution mechanisms in the European Union

Double taxation is a consequence of countries' individual rights to impose taxes. It arises when a taxpayer's situation crosses borders, and constitutes a tax obstacle generating costs and administrative burdens. The Commission's corporate tax reform package includes a proposal aimed at remedying the shortcomings of the current mechanism. A draft legislative resolution on the proposal is on the agenda of the Parliament's July plenary session.

Background

The proposal for a directive on double taxation dispute resolution mechanisms is part of the Commission's corporate tax reform package, adopted on 25 October 2016. The package also consists of a communication, Building a fair, competitive and stable corporate tax system for the EU, two proposals related to the re-launch of the Common Consolidated Corporate Tax Base (CCTB and CCCTB, both under consideration) and a proposal for a directive (adopted on 29 May 2017) amending the Anti-Tax-Avoidance Directive to tackle hybrid mismatches with third countries. The proposal is designed to update the existing framework.

Most Member States have bilateral tax treaties with each other to relieve double taxation when it occurs (double taxation conventions), and there are procedures to resolve disputes when they arise. The scope of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, signed on 23 July 1990, is limited to transfer pricing disputes and there is no possibility to appeal against the interpretation of the rules.

Taking a coordinated EU approach to dispute resolution

The proposal for a directive provides more legal certainty and broader scope, with clearer rules and stricter timelines, building on the systems already in place. It addresses a number of identified shortcomings. These include the fact that the current mechanisms are inefficient when it comes to resolving double taxation disputes, namely because of the limited scope (only transfer prices), the absence of a general obligation to reach agreement, and, in some cases, the lack of a double taxation convention. The proposal would extend the scope, from just the transfer prices covered by the convention, to all tax questions relating to business taxes. The proposal would also set an obligation to achieve a result (enforcement) which does not currently exist. Member States will have until 30 June 2019 to implement the directive and it will apply to complaints relating to the tax year starting on 1 January 2018 (with the possibility for Member States to apply it for earlier tax years too).

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In the European Parliament, the proposal was assigned to the Economic and Monetary Affairs Committee (ECON), which appointed Michael Theurer (ALDE, Germany) as rapporteur. The Committee report builds on the calls already made in Parliament's resolutions on TAXE 1, bringing transparency, coordination and convergence to corporate tax policies in the Union and TAXE 2 to reshape the mechanisms. The ECON committee adopted its report on 8 June 2017. Based on Article 115 of the Treaty on the Functioning of the European Union, and following a special legislative procedure the proposal requires unanimity in the Council, following consultation of the European Parliament. For its part, the Council agreed a general approach on 23 May 2017, in advance of Parliament's opinion.

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