European Economic and Social Committee

EESC opinion on Double Taxation Dispute Resolution Mechanisms

Comment from Mr Krister Andersson, EESC rapporteur

The EESC unanimously supported the Opinion on Double Taxation Dispute Resolution Mechanisms. It sends a strong signal to stakeholders and governments to act. Since the Maltese Presidency has made the issue of resolving international double taxation disputes in the EU a top priority, an agreement in Council will hopefully be achieved before 30 June 2017.

Setting up a fair and efficient corporate taxation system, as announced by the European Commission in its June 2015 Action Plan, requires a balanced approach between fighting tax fraud and avoidance and ensuring that business and citizens benefit from a growth and business friendly tax environment in the EU. Central to such a balanced approach is the need to improve tax certainty for businesses and investors and to make sure that, when profits are taxed where value is generated, they are not taxed twice.

There are close to a thousand double taxation cases in the limited dispute resolution mechanisms which are currently used in the EU. The number of double taxation disputes is actually much higher as there are even more cases outside these mechanisms and many more cases which are not even brought to the authorities' attention. For many SMEs, it is too costly to challenge conflicting tax claims. All agree that taxes should be paid where economic activity takes place, but it is important that the same income is not taxed in more than one Member State without proper coordination.

Resolving international double taxation may sound like a very technical issue, with limited interest to a broader public, but it is not. It is of vital importance to all EU citizens. The mere risk of double taxation deters investments and impedes job creation. For Europe, it is a question of competitiveness and growth prospects.

A directive is needed. The existing Arbitration Convention is not sufficient and only a directive will ensure that the administrative procedures will be clearly outlined and coordinated between countries. The need for a directive is further demonstrated by the fact that Member States have been unable to achieve a timely and effective way of eliminating international double taxation during the decades that they have used existing mechanisms.

If the tax authorities in the countries with conflicting tax claims do not cooperate, the taxpayer can turn to its national court to have a resolution body, an advisory commission, set up, which is obliged to resolve the double taxation within a certain period. This is a considerable strength in the proposal.

The proposal, however, also gives Member States considerable flexibility as to how to resolve the double taxation. This is another strength of the proposal.

The outlined framework could serve as best practice and it could set the stage for a similar approach at the OECD level. It is expected that the number of international double taxation cases will increase substantially in the coming years in the wake of new tax rules being implemented as a result of the initiatives related to Base Erosion Profit Shifting project, BEPS. In addition, the increase in the exchange of information between countries which is important for reducing or eliminating aggressive tax planning may also result in more instances in which countries have conflicting taxation claims.

The EU Commission proposal is therefore an essential step to create tax certainty and promote jobs in Europe. According to the EESC, it should be implemented without delay.

Brussels, 22 February 2017