

**NSD**  
N Ä R I N G S L I V E T S  
S K A T T E -  
D E L E G A T I O N

Skatte- och tullavdelningen  
Finansdepartementet  
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**The European Commission proposal for a Council Directive on Double Taxation Dispute Resolution Mechanisms in the European Union, COM (2016) 686 final**

**Opinion**

Näringslivets Skattedelegation (NSD) welcomes and supports the Commission proposal for a Council Directive to improve Double Taxation Dispute Resolution Mechanisms in the EU.

Double taxation remains a huge problem for businesses and an obstacle for cross border trade and investments. There is an urgent need to ensure a proper framework for resolving tax disputes between Member States with timely corresponding adjustments. Considering the many difficulties surrounding the re-launch of the Directive on a Common Consolidated Corporate Tax Base (CCCTB) and the slim likelihood of it ever reaching the consolidation stage, NSD urges the Swedish government to instead focus on reaching agreement on this very important Directive.

**Background**

On October 25, 2016, the European Commission presented a proposal for a Directive on Double Taxation Dispute Resolution Mechanisms in the European Union.

Huvudmän i NSD är:

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The proposal builds on the provisions in the existing Union Arbitration Convention, with the aim of broadening the scope to cover all cross-border situations, and improving procedures and mechanisms in place without replacing them. The objective is to provide taxpayers with enhanced rights to enforce the setting up of resolution mechanisms and to force Member States to achieve binding results through mandatory arbitration within a defined time-limit.

The Directive allows for a Mutual Agreement Procedure (MAP), initiated by the complaint of the taxpayer, under which the Member States shall freely cooperate and reach an agreement within 2 years. If the MAP 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.

The initial MAP phase is complemented with an automatic arbitration procedure which foresees solving the dispute by way of arbitration within a timeline of fifteen months in case Member States failed to reach an agreement during the initial amicable phase.

Enhanced transparency is one of the objectives of the proposed Directive. The competent authorities may publish the final arbitration decision and more detailed information, subject to agreement by the taxpayer.

## **Comments**

The NSD welcomes and supports the Commission proposal for a Council Directive to improve Double Taxation Dispute Resolution Mechanisms in the EU.

NSD would like to stress the urgency of implementing the double taxation dispute resolution mechanisms. There is no room for a delay. Double taxation remains a problem and an obstacle for cross border trade and investments. It is very important to ensure a proper framework for resolving tax disputes between Member States with timely corresponding adjustments.

As far back as 1976, a proposal was submitted to the Council on the elimination of double taxation in connection with the adjustment of transfer of profit between associated enterprises (arbitration procedure). This led to the signature in 1990 of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC).

NSD agrees with the Commission statement that Europe needs a tax system that fits its internal market and that supports economic growth and competitiveness, attracts investment, helps to create jobs, fosters innovation and upholds the European social model. Taxation should provide stable

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revenues for public investment and growth-friendly policies. It should ensure that all businesses enjoy a level-playing field, legal certainty and minimal obstacles when operating cross-border.

We agree with the Commission that one of the biggest tax obstacles to the Single Market is double taxation. The most recent figures indicate there are around 900 double taxation disputes ongoing in the EU, with EUR 10.5 billion at stake.

NSD very much welcomes the initiative by the Commission to address double taxation in a coordinated manner in the EU. We agree with the Commission that to boost jobs, growth and investment, it is necessary to create a favorable tax environment for business, by reducing compliance costs and administrative burdens, and by ensuring tax certainty. The importance of tax certainty in promoting investment and growth has recently been recognized by the G20 leaders, and has become the new global focus. Member States need to find a balance between implementing necessary reforms and providing a steady, clear and predictable tax environment for businesses.

NSD recognizes that eliminating double taxation is not by itself sufficient to create a level playing field in the area of taxation. In addition, the EU needs a positive, forward-looking framework for corporate taxation.

NSD recognizes that most Member States have bilateral tax treaties with one another to relieve double taxation and that there are procedures to resolve disputes. However, these procedures are long, costly and do not always result in an agreement. The multilateral Arbitration Convention, which has been agreed between Member States, provides some relief. However its scope is limited to transfer pricing disputes and there is no recourse to repeal the interpretation of the rules. We welcome the fact that a wider scope of cases will be able to benefit from the resolution mechanisms. These improvements to Dispute Resolution Mechanisms will save both businesses and administrations a considerable amount of time, money and resources and will reinforce tax certainty for companies in the EU.

We would like to underline the need for mechanisms ensuring that cases of double taxation are resolved more quickly and more decisively when they arise between Member States.

We welcome the proposal that in circumstances where Member States cannot agree on how to resolve a case, the taxpayer can ask its national court to set up an Arbitration Committee to deliver a final, binding decision on the case, within a fixed timeframe. This will help to avoid incertitude for the businesses involved.

NSD supports the Commission initiative to extend its monitoring of countries performance on all cases of double taxation disputes in cross-border situations on a yearly basis, in order to assess whether the objectives of the

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Directive are met. Existing analysis shows that there are cases that are prevented from entering existing mechanisms, that are not covered by the scope of the Union Arbitration Convention or DTCs, that get held up without the taxpayer being informed about the reasons or that are not resolved at all.

## NÄRINGSLIVETS SKATTEDELEGATION



Johan Fall

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