European Union

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Double Taxation in the European Single Market

The author, in this article, evaluates the implications for the prevention of double taxation among the Member States of the European Union of the recent Commission Communication on tax treaties and the Internal Market, and offers solutions to the problems it raises.

1. Introduction

It is a received wisdom that international double taxation inhibits cross-border commerce and investment. The OECD describes the effect of double taxation as follows:[1]

> Its harmful effects on the exchange of goods and services and movements of capital, technology and persons are so well known that it is scarcely necessary to stress the importance of removing the obstacles that double taxation presents to the development of economic relations between countries.

Accordingly, states adopt measures to relieve double taxation, primarily through unilateral and bilateral measures and, in limited instances by multilateral arrangements. With 21 Member States of the European Union also being OECD Member countries, it is, therefore, perhaps surprising that, in the EU context, legislation only has only been enacted to address cross-border double taxation in the Single Market in relation to limited inter-corporate payments of dividends,[2] interest and royalties.[3] The Arbitration Convention (90/436/EEC)[4] is the single multilateral tax treaty aimed at relieving double taxation among all Member States in a narrow, albeit important area.

It is also surprising that, given the emphatic view of the OECD, the European Court of Justice (ECJ) has ruled relatively recently that double taxation is not contrary to the EU treaties, as long as it results from the parallel exercise of tax sovereignty by the Member States concerned.[5]

The Commission undertook a consultation on tax treaties and the Internal Market in which it sought factual examples of cross-border double taxation cases from all taxpayers, individual or corporate. The consultation focussed on direct taxes, such as income taxes, corporate taxes, capital gains taxes, withholding taxes, inheritance taxes and gift taxes. The objective of the consultation was to obtain a picture of the real size of the problem and of its financial effect. Evidence of the time taken following taxpayers' appeals to tax authorities in cases where the double taxation was eliminated was also sought. Taxpayers and professional advisers were invited to provide suggestions for ways in which double taxation which had arisen in the European Union could be avoided.[6] Following the consultation, the Commission issued a Communication to the European Parliament, the Council and the European Economic and Social Committee setting out the Commission's proposals for possible solutions to double taxation in the Single Market.[7]

In its Communication, the Commission recognizes that double taxation creates barriers to cross-border establishment, activity and investment in the European Union and regards the removal of double taxation as being in the interest of business and citizens and can be a barrier to economic activity.[8] Despite measures taken by Member States and the European Union, the consultation exercise showed that significant double taxation remains.

The Commission notes that existing instruments are insufficient to address many of the remaining double taxation situations. It refers, in particular to the limited scope of the Interest and Royalties Directive (2003/49/EC) and that tax treaties do not cover all taxes relevant from a Single Market perspective and do not provide for the full removal of double taxation. Bilateral tax treaties also do not provide any uniform solution for triangular and mul-

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1. *OECD Model Tax Convention on Income and on Capital Introduction* (22 July 2010), Models IBFD.
2. EU Parent-Subsidiary Directive: Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, OJ L 225 (1990), EU Law IBFD.
3. EU Interest and Royalties Directive: Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, OJ L157 (2003), EU Law IBFD.
4. EU Arbitration Convention: Convention 90/436/EEC of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, EU Law IBFD.
5. BE: ECJ, 14 Nov. 2006, Case C-513/04, *Mark Kerckhaert and Bernadette Morres v. Belgian State*, ECJ Case Law IBFD; DE: ECJ, 12 Feb. 2009, Case C-67/08, *Margarete Block v. Finanzamt Kaufbeuren*, ECJ Case Law IBFD; BE: ECJ, 16 July 2009, Case C-128/08, *Jacques Damseaux v. Belgian State*, ECJ Case Law IBFD; and BE: Opinion of Advocate General Geelhoed, 6 Apr. 2006, Case C-513/04, *Mark Kerckhaert Bernadette Morres v. Belgian State*, para. 38, ECJ Case Law IBFD.
6. European Commission, Public Consultation Paper, *Double Tax Conventions and the Internal Market: factual examples of double taxation cases* (27 Apr. 2010).
7. European Commission, Communication to The European Parliament, *The Council and The European Economic And Social Committee: Double Taxation in the Single Market*, European Commission COM(2011) 712 final (11 Nov. 2011) (the "Communication").
8. Id., at para. 3.

tilateral relations between Member States[9] Some of these criticisms levied at bilateral tax treaties may be made with equal force in respect of instruments under EU law. For instance, the Parent-Subsidiary Directive (90/435/EEC), the Interest and Royalties Directive (2003/49/EC) and the Merger Directive (90/434/EEC)[10] all are limited in their application both by reference to the taxes and persons within their scope.

A more thorough examination of the unrelieved double taxation and its causes was undertaken by the International Fiscal Association (IFA) at its Paris Congress in September 2011.[11] The IFA study included reports from 17 Member States and a report on double taxation in respect of EU law.[12] Surprisingly, the Commission's Communication makes no reference to the study. While the IFA study focussed on business income, its findings are relevant to other areas of taxation. The study identifies the following six key factors as contributing to unrelieved double taxation in relation to corporate income taxation: (1) diverging views on taxable income; (2) the inconsistent allocation of deduction of expenses between domestic and foreign sources; (3) the inability to deduct foreign income losses against domestic income; (4) foreign tax credit limitations; (5) distortions due to temporal differences in the recognition of taxable income; and (6) inconsistent classification of foreign entities.

The Commission also regards the inconsistent interpretation of treaty provisions and conflicting application of tax treaties in practice as giving rise to double taxation. In common with the IFA study, the Communication identifies the considerable burden both in time and administrative cost.[13]

2. Possible Solutions

2.1. Double taxation and the TFEU 2007

The Commission observes that taxpayers have a strong expectation that the problems of double taxation ought to be addressed through solutions at the EU level.[14] Their conclusion in the Communication is that, under the current state of EU law, Member States are not obliged to eliminate double taxation as being general of the type they refer to as "non-discriminatory" double taxation, as this phenomenon falls outside the scope of the fundamental freedoms.[15] The Communication reiterates that this reflects the present state of EU law and recognizes that unjustified preference to domestic as opposed to cross-border situations in the area of economic double taxation have been held to be contrary to the fundamental freedoms, in the absence of pertinent justification.[16] The implication of these statements is that the Commission views the matter as not entirely settled.

Is double taxation contrary to the Treaty on the Functioning of the European Union (TFEU) 2007?[17] This is a subject that calls for some thorough re-examination. In this respect, it would be appropriate for the Commission to start making submissions to the ECJ in appropriate cases that are consistent with what the OECD says and the Commission's own conclusions about the effect on cross-border establishment, activity and investment in the European Union.

2.2. Strengthening existing instruments

Simultaneously with its communication, the Commission submitted a proposal for a recast of the Interest and Royalties Directive (2003/49/EC).[18] The proposal offers modest amendments to the existing Directive to reduce the incidence of double taxation on cross-border payments within the European Union.

Amendments proposed by the Commission merely aim to harmonize the tax regime for interest and royalty payments with those of profit distributions under the Parent-Subsidiary Directive (90/435/EEC). In this respect, the Commission proposes to align the list of qualifying entities with those included in the Interest and Royalties Directive (2003/49/EC) and to bring the shareholding requirements in line with the Parent Subsidiary Directive (90/435/EEC) by reducing the present 25% holding threshold to direct or indirect holdings of 10%.

A limitation on benefits of the Interest and Royalties Directive (2003/49/EC) to cases where the income derived from the payment is effectively subject to tax in the Member State of the receiving company or in the Member State where the recipient permanent establishment (PE) is situated can hardly be described as tackling double taxation. In the case of payments made by PEs it is proposed to clarify that the requirement that such payments represent tax-deductible expenditure in respect of the PE in the Member State in which it is situated, includes cases where the payment represents an expense incurred for the purposes of the PE's activity.

Given the broad recognition by the Commission of the negative role played by double taxation on the functioning of the Internal Market, the proposal is unambitious. The extension of the Merger Directive (90/434/EEC) to cover all taxes that are relevant to its operation and to provide for the elimination of double taxation when the

9. Id., at para. 4.
10. EU Merger Directive: Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office, of an SE or SCE, between Member States, OJ L225 (1990), EU Law IBFD.
11. IFA, *Cahiers de droit fiscal international, Key practical issues to eliminate double taxation of business income* vol. 96b (Sdu Uitgevers 2011), Online Books IBFD.
12. Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Spain, Sweden and the United Kingdom.
13. Communication, *supra* n. 7, at para. 3 and IFA, *supra* n. 11, General report, at para. 3.2 and the related national reports.
14. Communication, *supra* n. 7, at para. 4.
15. Id., at para. 2.
16. For instance, DE: ECJ, 12 Dec. 2002, Case C-324/00, *Lankhorst-Hohorst GmbH v. Finanzamt Steinfurt*, para. 32, ECJ Case Law IBFD; FR: ECJ, 14 Dec. 2006, Case C-170/05, *Denkavit Internationaal BV and Denkavit France SARL v. Ministre de l'Économie, des Finances et de l'Industrie* para. 39, ECJ Case Law IBFD; and NL: ECJ, 8 Nov. 2007, Case C-379/05, *Amurta SGPS v. Inspecteur van de Belastingdienst/Amsterdam*, para. 28, ECJ Case Law IBFD.
17. *Treaty on the Functioning of the European Union (TFEU)* OJ C 115 (2008), EU Law IBFD.
18. Proposal for a Council Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (recast) COM(2011) 714 final (11 Nov. 2011).

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non-tax deferred disposals of assets or shares occur would, however, make a useful contribution.

2.3. Scope and coverage of existing tax treaties

The Commission observes in the Communication that, on 1 January 2011, ten bilateral relations between Member States were not covered by a bilateral tax treaty and consider that there is a need to complete the framework of such tax treaties between all 27 Member States.[19] The Commission intends to examine ways of addressing triangular situations, and how to treat entities and taxes not covered by a bilateral tax treaty within the European Union. It is apparent from both the Communication and the IFA study that the existence of a bilateral tax treaty does not guarantee the elimination of double taxation. In light of this, the adequacy of bilateral application the existing intra-EU treaty network could usefully be added to the project.

Double taxation of inheritances has attracted particular attention. A consultation on possible approaches to dealing with cross-border inheritance tax obstacles in the European Union was undertaken in 2010 by the Commission in support of its efforts to obtain more evidence of the extent of any cross-border inheritance tax problems within the European Union and to find solutions to any problems identified.[20] Specific concerns include that Member States' inheritance tax rules as applied in cross-border situations that hinder EU citizens from fully benefiting from their right to movement across borders within the Internal Market and that these rules may also create difficulties for the transfer of small businesses upon the death of owners. The Commission states that it will take appropriate initiatives, in particular, with regard to inheritance taxes.

The magnitude of the task in relation to inheritance taxes is not to be underestimated. While taxes on income and capital gains across the European Union have a common conceptual base, the same cannot be said for taxes on wealth transmission. Some Member States tax the estate of the deceased, while others tax the successors, and some Member States levy no similar tax upon death. The interaction between inheritance taxes upon death with taxes on inter vivos wealth transfers and capital taxes on the ownership of wealth follow no set pattern. A wide range of approaches to succession and, in particular, the divide between civil and common law jurisdictions mean that any successful solution will of necessity reach into property and civil rights in Member States.[21]

2.4. Procedural and administrative solutions

The Commission is of the view that treaty provisions are not interpreted and implemented consistently by the Member States concerned and that double taxation often results from such interpretation conflicts. In its view, there is a need to assess the scope for developing in the European Union and, where possible, a common understanding of some concepts contained in tax treaties applicable between Member States. The Commission's proposed route to resolving these conflicts is vague. The Communication states:[22]

> Building on the positive JTPF experience, there is scope to examine the potential benefits of setting up a forum for MS' representatives (EU Forum on double taxation). On the basis of the discussions to be held in this forum, the Commission will consider the elaboration of a Code of Conduct on double taxation.

The consistent interpretation of tax treaties is an admirable objective. A solution modelled on the Joint Transfer Pricing Forum (JTPF) is not likely to be satisfactory if this simply results in further non-binding administrative pronouncements such as a Code of Conduct. The Communication describes inconsistent interpretation as "conflicting practices".[23] This hints at administrative practice that differs from Member State to Member State, rather than conflicting judicial interpretations. The principle of legal certainty as a central aspect of the rule of law dictates that consistent interpretation of tax treaties should be a matter of binding law. A better solution would, therefore, be to provide for the establishment of an EU tribunal or court with the power to give binding rulings on the interpretation of tax treaties. This is further considered subsequently in this section.

The Communication continues:[24]

> Depending on the case, it may be appropriate to have regard to identical or similar notions contained in EU law, as a specific EU dimension to the problem. Because of their importance for the internal market, it is appropriate to discuss these issues at EU level. However, such coordination may also contribute to the discussions held by international bodies such as the OECD and the UN, including when it comes to developing wider international standards.

The extent to which EU jurisprudence interpreting terms in EU legislation that are identical or similar to treaty terms may inform on the meaning of treaty terms is addressed by the orthodox principles of treaty interpre-

19. Communication, *supra* n. 7, at para. 5.2, footnote 38.
20. The United Kingdom, for example, only has five inheritance tax treaties with other Member States, i.e. the *Convention Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic for the Avoidance of Double Taxation with respect to Duties on the Estates of Deceased Persons* (21 June 1963), Treaties IBFD, *Convention Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Estates of Deceased Persons and Inheritances and on Gifts* (7 Dec. 1977), Treaties IBFD, *Convention Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Italian Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Duties on The Estates of Deceased Persons* (15 Feb. 1966) Treaties IBFD, *Convention Between the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Estates of Deceased Persons and Inheritances and on Gifts* (11 Dec. 1979), Treaties IBFD and *Convention Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Estates of Deceased Persons and Inheritances and on Gifts* (8 Oct. 1980), Treaties IBFD, the most recent of which was concluded in 1980.
21. This complexity is carefully examined in IFA, *Cahiers de droit fiscal international, Death as a taxable event and its international ramifications* vol. 95b (Sdu Uitgevers 2010), Online Books IBFD. The Communication, *supra* n. 7, at p. 61 provides useful insights into steps already undertaken by the Commission and on further action it may propose.
22. Communication, *supra* n. 7, at para. 5.3.
23. Id., at para. 4.
24. Id., at para. 5.3.

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tation. The rulings of a credible EU tribunal or court on treaty interpretation would be likely to carry considerably more weight internationally than the work of a discussion forum, in addition to fostering the rule of law. The already overlapping role of the OECD and the UN fora suggest that there is little to be gained by adding a third in the absence of evidence that the perspectives of Member States were not adequately reflected.

The Communication also proposes to address the easing and acceleration of dispute resolution in the European Union. It observes that responses to the public consultations criticized the fact that tax treaties do not allow timely dispute resolutions. Most tax treaties between the Member States provide the dispute resolution mechanism based on the pre-2008 article 25 of the OECD Model.[25] This merely requires contracting states to endeavour to resolve the issue and the taxpayer has no guarantee that double taxation will be eliminated or that the tax administrations will proceed swiftly. The Arbitration Convention (90/436/EEC) addresses these limitations, but is restricted in its scope to transfer pricing and the application of the arm's length principle.

The Communication notes that neither the Arbitration Convention (90/436/EEC) nor mutual agreement procedures (MAPs) under bilateral tax treaties provide a completely successful method of dispute resolution. From an EU perspective, the Commission concludes that the lack of an overall binding dispute resolution procedure is, therefore, an issue to be addressed, both for Single Market reasons and because of broader global competitiveness motivations, relating to the attractiveness of the European Union to foreign investors. While noting that article 25 of the OECD Model (2008) does provide for a MAP with a binding dispute resolution for unresolved double taxation cases if the taxpayer requests, the Commission proposes to consider improvements to the double taxation disputes procedures in all areas of direct taxation within the European Union.[26]

An incremental approach, as displayed in the proposed recast Interest and Royalties Directive (2003/48/EC), could be adopted by extending the Arbitration Convention (90/436/EEC) in respect of all issues arising from tax treaties. This would be helpful, particularly if the arbitration commissions were required to publish their interpretations. However, given the broad scope of the problem identified in the Communication, a more innovative and comprehensive solution is required.

First, the question of consistency of interpretation of tax treaties and broader dispute resolution issues must be addressed together. This cannot be achieved through the MAP approach alone. MAPs can be effective in resolving particular cases, but make no contribution to the development of international tax law. As a result, the same facts or disputed interpretations of a tax treaty may be repeated, not only between the same Member States, but also among others. If the purpose of the project is to assist in the development of the Single Market, consistency of interpretation of tax treaties, particularly where they are based on the OECD Model is essential.

Second, the quality of interpretation is enhanced by considering the arguments of all relevant parties. The arbitration model, whether based on article 25 of the OECD Model or the Arbitration Convention (90/436/EEC), only contemplates, as a matter of law, the arguments of the two contracting states. The taxpayer's point of view may be heard, but by invitation only.

In addition to the binding mandatory arbitration model offered by the Arbitration Convention (90/436/EEC) and adopted by the OECD, EU law offers a useful model based on the ECJ.[27] An EU tribunal charged with interpreting tax treaties among the Member States could have questions of interpretation referred to it under processes similar to those contained in article 267 of the TFEU 2007. Accordingly, courts or tribunals of the Member States could refer such questions. The arbitration models could be maintained, but the advisory commission or arbitration panel could have the same capacity to refer questions of interpretation or perhaps an obligation to do so. This would permit both judicial and administrative resolution of cross-border tax disputes to proceed, but with the same ability to obtain a decision on the interpretation of the relevant treaty provisions in a forum where all interested parties have an opportunity to present their arguments. In contrast to the ECJ, such a tribunal would, of necessity, be comprised of treaty specialists. This mechanism could either be set out in the form of a directive or a multilateral agreement, in terms of which, the Member States agree to refer treaty issues to the tribunal and to be bound by their rulings.

2.5. CCCTB

The adoption of a Common Consolidated Corporate Tax Base (CCCTB) as recently proposed by the Commission[28] would resolve double taxation problems between Member States for those multinational groups that elected to be taxed in the European Union under this regime. A single formula for the apportionment of the common tax base of a multinational group among relevant Member States in which the group operates would, by necessary impli-

25. The *Convention Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains* (19 June 2008), Treaties IBFD, *Convention Between the United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital* (30 March 2010), Treaties IBFD and *Convention Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands For the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains* (26 Sept. 2008), Treaties IBFD provide for mandatory binding arbitration based on the *OECD Model Tax Convention on Income and Capital* (17 July 2008), Models IBFD, but the *Convention Between the United Kingdom of Great Britain and Northern Ireland and the Republic of Hungary for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains* (7 Sept. 2011), Treaties IBFD is based on the pre-*OECD Model* (2008) and does not so provide.
26. Communication, *supra* n. 7, at para. 5.2.
27. Pt. Six, title I, chap. 1, sec. 5 TFEU (2007).
28. COM(2011)121 (16 Mar. 2011).

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cation, avoid tax on the same profits in more than one participating Member State. The Commission recognizes that this does not cure all double taxation as the regime is optional.[29] Some double taxation could also remain on the periphery of such groups where participations in entities do not qualify for inclusion in the group. In addition, not every business could qualify to elect into the CCCTB. While the Communication is directed towards double taxation between the Member States, unrelieved double taxation that arises with regard to EU based groups with operations in third countries or third country based groups with operations in the European Union would, because of mismatches between the formulary apportionment of the CCCTB and traditional methods of relieving double taxation, make the proposed regime less attractive, with the result that, as a practical matter, the proposed regime would only act as a double tax relief mechanism to a limited extent.

2.6. Other issues

One source of double taxation that is not explicitly considered in the communication is treaty override. Apart from offending the *pacta servanda sunt* principle of international law enshrined in article 26 of the Vienna Convention on the Law of Treaties 1969,[30] unilateral acts of the Member State legislatures to negate the effect of a tax treaty could give rise to double taxation by violating the balanced allocation of taxing rights agreed in the tax treaty. The approach of the ECJ hitherto has been not to opine on the failure by a Member State to give effect to a bilateral tax treaty.[31] Any thorough examination of the problems of double taxation should, however, give consideration to resolving this source of difficulty.

2.7. Double non-taxation

The Communication records in a footnote[32] that it is concerned by current situations of double non-taxation within the European Union. Although raised in a footnote and wholly unexplained, the Commission proposes to launch a fact-finding consultation procedure to establish the full scale of this phenomenon to identify and develop the appropriate policy response.[33]

This expression is conceptually dubious, except in the context of the CCCTB or wholly co-ordinated tax systems, under which the Member States are not free to each determine their own tax policies. If Member States are entitled to determine the tax base and the rate of tax, that entitlement includes not taxing every item or not taxing every item in the same way as every other Member State. It is an obvious consequence of the exercise in parallel by Member States of their fiscal sovereignty.

Despite the linguistic symmetry, any conceptual link of one as a corollary of the other is false. Any international double non-taxation, whether deliberate or fortuitous, does not give rise to obstacles to cross-border activity that calls for measures if either international trade and investment or an internal market is to be created. Although unstated, the footnote carries a connotation of disapproval. If, for example, fortuitous international double non-taxation is exploited and this is regarded as abusive, the appropriate context for its examination is abuse of law.[34] Linking it with double taxation is only likely to confuse rather than clarify policy objectives.

2.8. Balanced allocation of taxing rights

Fiscal sovereignty does not of itself admit any limitations. Measures to relieve or eliminate double taxation reflect a restraint on that sovereignty in the interest of eliminating obstacles to cross-border movement and activity. The balanced allocation of taxing rights recognized under EU law involves a sharing of the exercise of fiscal sovereignty. It is implicit that one state cannot take all and participate in an allocation of taxing rights. Traditionally the balance has been achieved between states by agreement to distribute those taxing rights between the states as embodied in tax treaties. The requirement that the allocation be "balanced" carries with it a connotation of fairness between contracting states. In a period of fiscal stress and budgetary shortfalls achieving a principled and sustainable allocation is likely to be challenging. If, however, the Single Market achieves the prosperity and stability its founders contemplated, removing the obstacles to its proper functioning on such a basis is essential.

3. Conclusions

If double taxation indeed creates barriers to cross-border establishment, activity and investment, then its elimination in the European Union ought to be an objective to be pursued. Double taxation is plainly a consequence of the coexistence of national tax systems. The CCCTB is a bold initiative that would, in principle, eliminate potential double taxation in the corporate direct tax area for large multinational groups along with the elimination of national tax systems insofar as they determine the tax base and allocation among Member States. Double taxation is capable of being successfully eliminated by appropriate treaties that involve a less radical approach to fiscal sovereignty. This too will, however, require bold and imaginative measures.

29. Communication, *supra* n. 7, at para. 4.
30. *Vienna Convention on the Law of Treaties* (23 May 1969), Treaties IBFD.
31. DE: ECJ, Case C-298/05, 6 Dec. 2007, *Columbus Container Services BVBA & Co. v. Finanzamt Bielefeld-Innenstadt*, para. 46, ECJ Case Law IBFD; BE: Opinion of Advocate General Alber, 8 June 2000, Case C-141/99; *NV Algemene Maatschappij voor Investering en Dienstverlening (AMID) v. Belgian State*, para. 18, ECJ Case Law IBFD; and FR: Opinion of Advocate General Ruiz-Jarabo Colomer, 20 Nov. 1997, Case C-336/96, *Mr and Mrs Robert Gilly v. Directeur des services fiscaux du Bas-Rhin*, para. 25, ECJ Case Law IBFD.
32. Communication, *supra* n. 7, at footnote 1.
33. Id., at para. 6.
34. This has received much attention already. *See*, for example Communication of 19 December 2006 from the Commission to the Council, the European Parliament and the European Economic and Social Committee entitled *Coordinating Member States' direct tax systems in the internal market*, COM(2006) 823 final, paragraph 2.3 and Commission Communication of 10 December 2007 to the Council, the European Parliament and the European Economic and Social Committee entitled *The application of anti-abuse measures in the area of direct taxation – within the EU and in relation to third countries*" COM(2007) 785 final.

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