



EU Direct Tax Newsalert

EU Directive on Tax Dispute Resolution Mechanisms formally adopted

Introduction

On 10 October 2017, the ECOFIN Council formally adopted a Directive on tax dispute resolution mechanisms in the EU with the objective of establishing a more effective and efficient procedure to resolve disputes within the EU. The Directive builds on the existing Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (EU Arbitration Convention). Unlike the EU Arbitration Convention, which is limited to disputes over double taxation arising from transfer pricing and the attribution of profits to permanent establishments, the new EU Directive has a more extensive scope and guarantees taxpayers' rights and access to the mechanism.

Background

The Council had already reached political agreement on the Directive in May 2017. In its preamble, it is recognized that double taxation can create serious tax obstacles for cross-border business operations and that the existing mechanisms contained in bilateral tax treaties and in the EU Arbitration Convention may not always lead to the effective resolution of such disputes in a timely manner. As a result, the Council sees the need for a harmonized and transparent framework for the resolution disputes which should contribute to legal certainty and a more business-friendly environment in the EU.

Substance of the Directive

The Directive applies to those disputes arising from the interpretation and application of agreements and conventions that provide for the elimination of double taxation of income and, where applicable, capital.

Any person, who is a resident of an EU Member State for tax purposes and whose taxation is directly affected by a matter giving rise to a dispute, may within three years from the receipt of the first notification of the action resulting in, or that will result in the dispute, submit a complaint simultaneously to each of the concerned EU competent authorities. The complaint will only be accepted if the taxpayer provides each of the concerned competent authorities with the required information and copies of any supporting evidence having regard for the applicable national laws on the protection of information and trade, business,

industrial or professional secrets. Any of the concerned competent authorities may, within a period of six months from having received all the necessary documents, decide to resolve the dispute on a unilateral basis. If that is not the case, the Member States concerned shall endeavour to solve the dispute by means of a mutual agreement procedure (MAP) within a period of two years. If the Member States reach an agreement under the MAP within the stipulated timeframe, this will be binding on the competent authorities and enforceable by the taxpayer subject to his acceptance of the agreement. If the Member States fail to reach an agreement under the MAP, the concerned competent authorities will inform the taxpayer of the reasons thereto.

In the latter case, upon a request by the taxpayer to the competent authorities of the Member States concerned, an Advisory Commission, consisting of three to five independent arbitrators and up to two representatives of each Member State, shall be set up. The Directive provides Member States with the flexibility to set up an Alternative Dispute Resolution Commission instead of the Advisory Commission, which may apply to any dispute resolution processes or technique to solve the dispute in a binding manner. The Directive provides for appeal possibilities for taxpayers to assure that the competent authorities will apply the provisions of the Directive.

Takeaway

By providing mandatory and binding dispute resolution mechanism with improved access and increased involvement for the taxpayer, clear and shorter timeframes and an obligation for the Member States to reach a solution, the Directive will be a significant improvement of the existing rules. Member States must implement the Directive into their national laws by 30 January 2019 at the latest. It will apply to any complaint submitted from 1 July 2019 onwards relating to disputes concerning income or capital earned in a tax year commencing on or after 1 January 2018.

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