



**ACCOUNTANCY
EUROPE.**

TAX DISPUTE RESOLUTION

How to address double taxation

Factsheet

FACTS.

**TAX
SEPTEMBER 2019**

HIGHLIGHTS

On 1 July 2019, the EU's Directive on tax dispute resolution (2017/1852) entered into force. The Directive sets up a new process for the resolution of tax disputes in the EU. Both Member States and taxpayers have new obligations and opportunities under this legislation.

Accountants, auditors and advisors should be prepared to support businesses in going through this procedure and ensure an efficient and fair outcome in double tax cases.

This factsheet gives an overview of the new Directive's main provisions focusing on what the taxpayer must do. It aims to equip European accountants with the knowledge that will enable them to help taxpayer clients deal with double tax disputes, by navigating through the new rules.

INTRODUCTION

On 1 July 2019, the EU's Directive on tax dispute resolution (2017/1852)¹ entered into force. It is part of the European Commission's action plan² for fair and efficient corporate taxation in the EU.

The Directive sets up a new process for the resolution of tax disputes in the EU, in which both Member States and taxpayers will have new obligations and opportunities.

Prior to the new Directive, most EU Member States had bilateral tax treaties to resolve double taxation issues, and there are procedures in place to resolve such disputes when they arise. However, these procedures are long, costly and do not always result in an agreement. The European Commission, therefore, proposed improvements to the existing double tax resolution mechanisms to improve certainty for taxpayers.

Until now, only tax authorities could submit a tax dispute to arbitration, without any means for the taxpayer to trigger this process. This Directive gives the opportunity to all taxpayers under bilateral tax treaties and the Union Arbitration Convention³ to submit a complaint for double taxation. The taxpayer can now choose to either appear before the authorities themselves or to appoint a representative.

Accountants, auditors and advisors should be prepared to support businesses in going through this procedure and ensure an efficient and fair outcome in double tax cases.

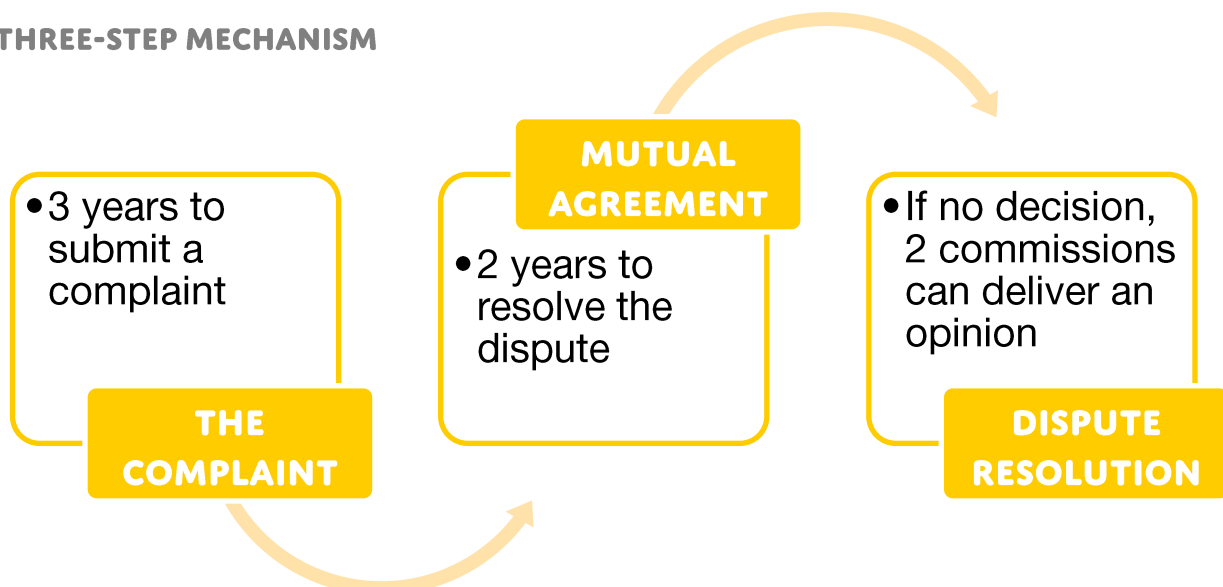
This factsheet gives an overview of the new Directive's main provisions focusing on what the taxpayer must do and aims to equip European accountants to help their taxpayer clients deal with double tax disputes by navigating through the new rules.

IN BRIEF

The Directive introduces a mutual agreement procedure (MAP) initiated by a taxpayer, under which Member States must resolve a tax dispute within two years.

If this procedure fails, the case moves to the next dispute resolution procedure in which the competent national authorities involved will take a binding decision. The mechanism applies regardless of the remedies available under national law on any of the Member States concerned.

A THREE-STEP MECHANISM



¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L1852&from=fr>

² https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/fairer_corporate_taxation/com_2015_302_en.pdf

³ https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/transfer-pricing-arbitration-convention_en

STEP 1: THE COMPLAINT⁴

When a business or a taxpayer has been subject to double taxation, a complaint can be submitted simultaneously to both Member States involved, requesting the resolution of the case. The taxpayer has three years to file the complaint from the moment they are notified of double taxation. The complaint must be written in an official language of the relevant Member State and gather at least the following information:

- The Member States involved
- Name, address, tax identification number and all available information to identify the affected person
- The tax periods concerned
- Facts and circumstances of the case: nature, date of the actions, details of the tax charged, currencies, factual and legal arguments
- Reference to the applicable national rules and international agreements
- Details of any litigation initiated or complaint submitted under another procedure
- Commitment to respond to all appropriate requests from a competent authority
- Copy of the final tax assessment decision, tax audit report or other equivalent document leading to the question in dispute

The Member States involved will then have two months to acknowledge receipt of the information to both the taxpayer and the other Member States concerned, and inform one another of the chosen language for the procedure.

Within three months from the receipt of the initial set of information, the competent authorities can request additional information from the taxpayer, whilst taking into account applicable national professional secrecy rules. The taxpayer then has three additional months to reply to the request for additional information, and to send the additional information to the Member States concerned.

Once the competent authorities consider that they have all the relevant information, they have six months to decide on the acceptance or rejection of the taxpayer's complaint. If the complaint is accepted, the process moves to the mutual agreement stage. If the authorities reject the case, taxpayers can appeal against the decision in accordance with national rules.

SPECIAL PROVISIONS FOR INDIVIDUALS AND SMES

To simplify the procedure and to reduce the administrative burden, Article 17 provides an option that individuals and SMEs can file their complaint solely to the competent authority of the Member State in which they reside. It will be up to the home Member State to then notify the other Member State involved within two months.

STEP 2: MUTUAL AGREEMENT PROCEDURE

Once the mutual agreement procedure (MAP) is launched, the involved Member States have two years to resolve the dispute. This period can be extended by up to one year at the request of a competent authority to the other Member State involved.⁵

If an agreement under MAP is reached, the taxpayer is notified of this decision. It must then accept the decision and cease any other potential remedy. Only once the decision is accepted by the taxpayer it becomes enforceable, regardless of any legal time limits applicable at a national level.⁶

If, however, Member States under MAP cannot find an agreement within the period of two years, the process enters the dispute resolution stage.

⁴ Article 3 to 5, Directive 2017/1852.

⁵ A Member State can also decide to resolve the dispute on a unilateral basis. In this case, it notifies this decision to the taxpayer and the other relevant Member State, Article 3, Directive 2017/1852.

⁶ Article 4, Directive 2017/1852.

STEP 3: DISPUTE RESOLUTION PROCEDURE

If Member States fail to reach an agreement under MAP within the defined timeframe (two years with a possible one-year extension), the Directive proposes two types of Commissions that can provide the competent authorities with their opinion: the so-called Advisory Commission and the Alternative Dispute Resolution Commission. If the competent authorities fail to set up the Commissions requested by the taxpayer, it can turn to a competent national court.

The rules for the appointment of some members of the Commissions, such as an independent person of standing, will be agreed between Member States concerned. If they fail to do so, national courts will have their say in the process, in accordance with national rules.

These Commissions can ask the taxpayer and the competent authorities for any relevant information, and the taxpayer is entitled to be represented in these Commissions.⁷

Commission type 1: The Advisory Commission

If a complaint has been rejected or no agreement has been reached under MAP, the taxpayer can request the setting up of an Advisory Commission, composed of representatives of each Member State involved. The taxpayer can request setting up such a Commission only if no other appeal can be made.⁸

The affected person can ask for an Advisory Commission within 50 days from the notification of the rejection or the failure to reach an agreement under MAP. The competent authorities then have four months to set up the Advisory Commission. Once the Commission adopts a decision, it notifies the competent authorities within a month.

The Directive gives a framework for the composition of this Commission, agreed between the competent authorities of the Member States involved in the case.⁹

Commission type 2: The Alternative Dispute Resolution Commission¹⁰

Alternatively, the competent authorities can choose to set up an Alternative Dispute Resolution Commission, which will be able to apply any other dispute resolution process than the Advisory Commission, including arbitration. Compared to the Advisory Commission, the Alternative Dispute Resolution Commission may apply, where appropriate, any legal dispute resolution processes to solve the dispute, including the 'final offer' arbitration process.

Competent authorities must agree on the rules of functioning of the Commission and notify the affected person within three months. They must also agree on dates and time frame, references to national legal provisions and other relevant information.

Procedure for the Commissions

The Commissions have six months to deliver an opinion, with a possible extension of up to three months. Their opinion will have to be based on international agreement or applicable national rules.¹¹ Once the Commission gives its final decision, the competent authorities have six months to decide how to resolve the dispute; this agreement can even deviate from the Commission's opinion. If, however, the competent authorities fail to find an agreement, they will be bound by the Commission's opinion.

The final decision shall be binding on the Member States concerned and shall not constitute a precedent.

⁷ Article 13, Directive 2017/1852.

⁸ Article 6, Directive 2017/1852.

⁹ Article 8, Article 9, Directive 2017/1852.

¹⁰ Article 10, Article 11, Directive 2017/1852.

¹¹ Article 14, Directive 2017/1852.

In either case, the taxpayer has to be notified of a final decision on the case within 30 days of such a decision. If not, the taxpayer can appeal in its Member State of residence. The decision is then binding and implemented within two months from the taxpayer being notified about it and having forgone the right to any domestic remedy.¹²

TIMELINE

DOUBLE TAXATION COMPLAINT

- 3 years from the first notification of the action
- 3 months to reply to additional information request
- acceptance/rejection decision within 6 months



MUTUAL AGREEMENT PROCEDURE

From the acceptance of the case, Member States have 2 years to reach an agreement



No agreement reached



Agreement reached

COMPLAINT RESOLVED



DISPUTE RESOLUTION:

ADVISORY COMMISSION

- taxpayer can request setting up the Commission within 50 days from the notification of the rejection/no agreement reached
- the Commission delivers an opinion
- Member States follow the opinion if no agreement is reached during this period

Or

ALTERNATIVE DISPUTE RESOLUTION COMMISSION

- competent authorities can request setting up the Commission within 50 days from the notification of the rejection/no agreement reached
- can apply any other legal dispute resolution process including arbitration
- same rules as with Advisory Commission apply: binding solution in no agreement reached between Member States

IMPLEMENTATION

The new provisions apply to complaints submitted from 1 July 2019 related to a tax year commencing on or after 1 January 2018. If both agree, competent authorities of the Member States concerned can also apply the Directive to any complaint submitted prior to that date or to earlier tax years. According to the European Commission's estimates, there are currently 2 000 such disputes pending in the EU. The new Directive will be evaluated in 2024.

DISCLAIMER: Accountancy Europe makes every effort to ensure, but cannot guarantee, that the information in this publication is accurate and we cannot accept any liability in relation to this information. We encourage dissemination of this publication, if we are acknowledged as the source of the material and there is a hyperlink that refers to our original content. If you would like to reproduce or translate this publication, please send a request to info@accountancyeurope.eu.

¹² Article 15, Directive 2017/1852.



Avenue d'Auderghem 22-28, 1040 Brussels



+32(0)2 893 33 60



www.accountancyeurope.eu



@AccountancyEU



Accountancy Europe

ABOUT ACCOUNTANCY EUROPE

Accountancy Europe unites 51 professional organisations from 36 countries that represent close to **1 million** professional accountants, auditors and advisors. They make numbers work for people. Accountancy Europe translates their daily experience to inform the public policy debate in Europe and beyond.

Accountancy Europe is in the EU Transparency Register (No 4713568401-18).