

Review of the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union

Fields marked with * are mandatory.

Introduction

Background of this Public Consultation

Double taxation occurs when two or more countries claim the right to tax the same income or profits of a company or person. This can happen, for example, due to a mismatch in national rules or different interpretations of the transfer pricing rules in a Double Taxation Treaty ('DTC'). This has repercussions in terms of tax fairness in that taxpayers should be able to avail of efficient and effective relief procedures when tax disputes arise on a cross-border basis in the EU. Secondly, the functioning of the Internal Market, and the objectives of creating a competitive tax environment, can be disrupted if business face obstacles in the form of double taxation of they operate cross-border. These issues were highlighted in the Action Plan 2015 on a fair and efficient corporate tax system in the European Union[1].

To address these issues, the Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union (the 'DRM') was adopted by Member States on 10 October 2017 and is applicable as from 1 July 2019[2]. The general objectives of the DRM are to improve the EU business environment, contribute to boosting investment, the creation of jobs and improving the confidence of business and citizens in public administration. Specific objectives include ensuring legal certainty, ensuring a level playing field for EU businesses, and ensuring an appropriate level of transparency. The DRM ensures a coordinated EU approach to dispute resolution. The DRM focusses on the main stakeholder(s) affected by double taxation situations – for both businesses and citizens - and has a broader scope compared to some of the previous tools as it goes beyond transfer pricing and the attribution of profits to permanent establishments.

The DRM has clearer rules and more stringent deadlines to resolve the dispute. It further adds targeted enforcement blocks, as regards enforcement and effectiveness compared to the Arbitration Convention (90/436). The DRM also provides for a common approach within the European Union when compared to the Multilateral Instrument established under the Base Erosion and Profit Shifting (BEPS) initiative which allows Member States to choose for different options under the provisions related to mutual agreement procedures and arbitration for double taxation relief[3].

Prior to the DRM, EU taxpayers availed of a number of options to obtain relief for double taxation. In the European Union, mutual agreement procedures ("MAP") are available in most of the DTCs entered into by

Member States. MAPs seek to obtain an agreement between two or more tax authorities in order to relieve or mitigate the effects of double taxation for the taxpayer. Further, the EU Arbitration Convention and its amendments (the 'AC') established a procedure to resolve disputes where double taxation occurs between enterprises of different Member States as a result of an upward adjustment of profits of an enterprise of one Member State[4]. Whilst most DTCs include a provision for a corresponding downward adjustment of profits of the associated enterprise concerned, they do not generally impose a binding obligation on the Contracting States to eliminate the double taxation. The AC seeks to provide such a binding obligation.

Despite the aforementioned tools to relieve double taxation, there was still room for improvement especially when it comes to the access of taxpayers to the different mechanisms, the scope (i.e., that go beyond transfer pricing and profit allocation), effectiveness and efficiency, timeliness, conclusiveness and the enforcement of resolving a dispute. Moreover, the traditional methods of resolving disputes no longer reflect the complexity and risks of the global tax environment. Accordingly, the DRM was adopted by Member States to address these shortcomings.

Purpose of this Consultation

According to Article 21 of the DRM, the Commission should conduct a review and issue a report on the functioning of the DRM. The DRM has been operational since 1 July 2019 therefore the first review will focus on implementation aspects of the DRM. The Consultation seeks to obtain stakeholders' views of the DRM in order to assess the functioning of the DRM in its first years.

Figures submitted by Member States to the Commission at the end of 2022 indicate that the first two phases of the DRM are most relevant to review: Article 3 of the DRM 'Complaint' stage and Article 4 'Mutual Agreement Procedure' stage[5]. Accordingly, the Consultation aims to obtain taxpayers experience with these phases of the DRM.

The deadline for submission to this consultation is 10 May 2024.

Definitions used in the Consultation

BEPS

Base Erosion and Profit Shifting. The term is hereafter referred to in the context of the OECD Base Erosion and Profit Shifting 15-point Action Plan published in 2013 (see OECD (2013)). BEPS Action 14 provides a MAP mechanism to resolve tax-related disputes between jurisdictions.

Double taxation

In the Commission Communication on Double Taxation in the Single Market (C(2011)712 final), double taxation is defined as the imposition of comparable taxes by two (or more) tax jurisdictions in respect of the same taxable income or capital. Although double taxation can also occur in purely domestic situations, in particular as far as it concerns economic double taxation, this Consultation focuses on cross-border situations only.

Traditionally, double taxation is divided into two kinds, juridical double taxation and economic double taxation. In the case of juridical double taxation two comparable taxes are applied to the same taxpayer in respect of the same income or capital. Generally, the expression economic double taxation is used when different taxpayers are taxed in respect of the same income or capital.

Double Tax Conventions, DTC (treaties)

According to the OECD glossary of tax terms, a Double Tax Convention (Treaty) is defined as an agreement between two (or more) countries for the avoidance of double taxation. A tax treaty may be titled a Convention, Treaty or Agreement.

DRM

Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. The Directive seeks to provide taxpayers with an effective and efficient mechanism to relieve double taxation in the European Union.

EU Arbitration Convention, AC

The term "Arbitration Convention" shall be construed hereafter as the Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, which is a multilateral instrument establishing a procedure to resolve disputes where double taxation occurs between enterprises of different Member States as a result of an upward adjustment of profits of an enterprise of one Member State due to transfer pricing rules and allocation of profit to Permanent Establishments.

Model Tax Conventions, MTC (treaties)

According to the OECD glossary of tax terms, a model tax convention (treaty) is designed to streamline and achieve uniformity in the allocation of taxing right between countries in cross-border situations. Model tax treaties developed by OECD and UN are widely used and a number of countries have their own model treaties. When it is referred to "Model Tax Convention(s)" hereafter, it should be narrowly construed as the OECD Model Tax Convention(s).

Multilateral Instrument or Agreement

A written agreement between three or more sovereign States establishing the rights and obligations between the parties. It can refer hereafter to a specific clause in a multilateral convention (treaty) or to the multilateral convention (treaty) itself.

Mutual Agreement Procedure, MAP

A means through which tax administrations consult to resolve disputes regarding the application of double tax conventions. This procedure, described and authorized notably by Article 25 of the OECD Model Tax Convention, can be used to eliminate double taxation that could arise from a transfer pricing adjustment.

Permanent Establishment (PE)

According to the OECD glossary on tax terms the term is used in double taxation agreement (although it may also be used in national tax legislation) to refer to a situation where a non-resident entrepreneur is taxable in a country; that is, an enterprise in one country will not be liable to the income tax of the other country unless it has a 'permanent establishment' through which it conducts business in that other country. Even if it has a PE, the income to be taxed will only be to the extent that it is 'attributable' to the PE.

[1] COM/2015/302 – available at https://taxation-customs.ec.europa.eu/system/files/2016-09/com_2015_302_en.pdf published on 17 June 2015.

[2] [Resolution of tax disputes in the European Union](#) - European Commission (europa.eu)

[3] Action 14 - [OECD BEPS Mutual Agreement Procedure for Resolution of tax-related disputes between jurisdictions](#)

[4] [Transfer Pricing and the Arbitration Convention](#) - European Commission (europa.eu)

[5] Resolution of tax disputes in the European Union - European Commission (europa.eu)

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

If you are replying in your professional capacity of on behalf of an organisation, what type of organisation do you represent?

- Company
- Business association
- Tax intermediary, accountant or advisor
- Non-governmental organisation, Academic institution, Think-Tank
- Public institution
- Other (please specify)

If you have replied 'Business Association', please select the option that better describes the area of activity of your organisation or your members.

- Generalist business association
- SME association
- Banking and other financial services
- Online platforms and other online activities
- Tax intermediary, accountant, or advisor
- None of the above

If you replied 'None of the above' , please specify

* First name

* Surname

Gisby

* Email (this won't be published)

paul@accountancyeurope.eu

* Organisation name

255 character(s) maximum

Accountancy Europe

What is the area of activity of your company?

- Aeronautics and Space
- Agrofood
- Automotive industry and Services
- Pharmaceuticals and Healthcare
- Construction
- Transport and Logistics
- Electrical and Electronic Engineering Industries
- Chemicals
- Textile
- Banking
- Consultancy
- Other

Does your company have subsidiaries or branches in EU countries other than that of main establishment?

- Yes
- No

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

4713568401-18

*Country of origin

Please add your country of origin, or that of your organisation.

This list does not represent the official position of the European institutions with regard to the legal status or policy of the entities mentioned. It is a harmonisation of often divergent lists and practices.

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| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Martin |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon |
| <input type="radio"/> Albania | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria | <input type="radio"/> Ecuador | <input type="radio"/> Luxembourg | <input type="radio"/> Samoa |
| <input type="radio"/> American Samoa | <input type="radio"/> Egypt | <input type="radio"/> Macau | <input type="radio"/> San Marino |
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| <input type="radio"/> Anguilla | <input type="radio"/> Eritrea | <input type="radio"/> Malaysia | <input type="radio"/> Senegal |
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| <input type="radio"/> Australia | <input type="radio"/> Fiji | <input type="radio"/> Mauritania | <input type="radio"/> Slovakia |
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| <input type="radio"/> Bangladesh | <input type="radio"/> French Southern and Antarctic Lands | <input type="radio"/> Moldova | <input type="radio"/> South Georgia and the South Sandwich Islands |

- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan

- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria

- Burkina Faso
- Burundi

- Cambodia

- Cameroon
- Canada
- Cape Verde
- Cayman Islands
-

- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland

- Grenada
- Guadeloupe

- Guam

- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau

- Guyana

- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong

- Hungary

- Iceland
- India
- Indonesia
- Iran

- Iraq

- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma

- Namibia
- Nauru

- Nepal

- Netherlands
- New Caledonia
- New Zealand
- Nicaragua

- Niger

- Nigeria
- Niue

- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan

- Palau

- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland

- Syria

- Taiwan
- Tajikistan
- Tanzania
- Thailand

- The Gambia

- Timor-Leste
- Togo

- Tokelau
- Tonga

- Trinidad and Tobago
- Tunisia
- Türkiye
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu

Central African

Republic

- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena
- Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

Single Choice Question

- Austria
- Belgium
- Bulgaria
- Croatia
-

- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- Other

If you have replied 'Other', please specify:

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

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Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

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Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

3. Assessment of the DRM

The first part of this section assesses the functioning of the DRM. The second part of this section seeks to obtain the experience of taxpayers applying for relief from double taxation, including the use of the DRM.

3.1. Functioning of the DRM

Q 3.1.1 To what extent do you consider that the DRM has achieved the following objectives:

	Improved	No change	Deteriorated	No opinion
Business environment of the EU				No opinion
Inward investment in the EU				No opinion
Employment				No opinion
Confidence of companies and taxpayers in public administrations				No opinion

Q 3.1.2 In which respect have double taxation relief mechanisms in the EU, including the DRM, improved or worsened since the DRM was implemented as from 1 July 2019:

	Improved	No change	Deteriorated	No opinion
Availability of mechanisms for double taxation relief		No change		
Complexity of obtaining double taxation relief		No change		
Cost of obtaining double taxation relief	Improved			
Timeliness of obtaining a double taxation relief	Improved			
Enforceability of a double taxation relief decision		No change		

Q 3.1.3 To what extent do you consider that the DRM improved the double taxation relief procedures in the EU compared to pre-existing mechanisms (i.e., MAP, the Arbitration Convention, and national relief procedures):

	To a large extent	To a moderate extent	To a minor extent	No improvement	No opinion
Access to all taxpayers (that is to both legal entities and individuals), for double taxation relief		To a moderate extent			
Scope of the taxes included in the DRM (that is not just disputes involving transfer pricing and profit allocation)		To a moderate extent			
Effectiveness that your dispute has been addressed and, when entitled, obtaining double taxation relief			To a minor extent		
Efficiency of the process in obtaining double taxation relief (that is the costs versus benefits)			To a minor extent		
Timeliness of obtaining double taxation relief			To a minor extent		

Q 3.1.4 To what extent do you consider that the following features of the DRM have improved double taxation relief procedures in the EU:

	To a large extent	To a moderate extent	To a minor extent	No improvement
Enforceable obligation of Member States to resolve the dispute	To a large extent			
Recourse of taxpayers to national courts to unblock procedure	To a large extent			
Publication of final decision		To a moderate extent		
Covers all disputes arising from an agreement or convention concluded between Member States providing for relief from double taxation		To a moderate extent		
Clearly defined and enforceable deadlines		To a moderate extent		

Q 3.1.5 If applicable, what aspects of the DRM do you consider could be changed to improve its functioning:

See attached letter for more details

3.2 Taxpayer experience of using the double taxation relief mechanisms in the EU, including the DRM

The DRM has been in operation since 1 July 2019. This means that taxpayers can use the DRM to apply to any complaint submitted from 1 July 2019 and related to income or capital earned in a tax year commencing on or after 1 July 2018. However, tax authorities in the EU may decide to apply this Directive with regard to any complaint that was submitted prior to that day or earlier tax years.

Q 3.2.1 Did you seek remedies to remove double taxation since the DRM has been available since 1 July 2019:

- Yes, please continue to question 3.2.3
- No

Q 3.2.2 If you did have a double taxation case but did not seek remedies, what was /were the reasons(s) for not having sought remedies to remove double taxation?

Multiple choices are possible:

- Not enough staff internally to take care for the case
- It would have taken/will take too long
- There was no awareness of existing measures to obtain relief from double taxation.
- Probability/chances of success were estimated as too low
- Double taxation was estimated as less costly/burdensome than engaging in a resolution mechanism
- An agreement with the tax administration was reached to a reduced amount of double taxation, made conditional on a withdrawal of the request for double taxation relief.
- A fear for further investigation/audits
- Concerns that some sensitive information may be disclosed to competitors
- Concerns that some information may be used against us in a different context or with different authorities (e.g., customs)
- Time limits for submission were missed
- There are/were no remedies for double taxation cases between the Member States involved

- Other
- Not applicable

If 'Other' was chosen for 3.2.2, please specify:

Q 3.2.3 Which of the following remedies did you seek to relieve double taxation:

- Submit a complaint under Article 3 of the DRM to the competent authorities of each of the Member States concerned in the dispute
- Appeal to the tax authorities/court in the State of Source
- Appeal to the tax authorities/court in the State of Residence
- Initiation of a MAP under a Double Taxation Convention
- Initiation of a MAP under the EU Arbitration Convention
- Other

If 'Other' was chosen for 3.2.3, please specify:

Q 3.2.4 If you did not seek a remedy under the DRM but instead used one of the alternative double taxation relief mechanisms, why was this?

- Not aware of the existence of the DRM
- Experience with the alternative double taxation relief mechanisms
- Estimated that the alternative mechanisms would be more effective than the DRM for your DTC case
- Estimated that the alternative mechanisms would be more efficient in terms of cost and time than the DRM for your DTC case
- Other

If 'Other' was chosen for 3.2.4, please specify:

Q 3.2.5 For what tax period was your complaint relevant:

- A dispute relating to income or capital earned in a tax year commencing on or after 1 July 2018
- A dispute relating to income or capital earned in a tax year commencing before 1 July 2018

Q 3.2.6 If you did seek a remedy under the DRM, was your complaint accepted by the relevant competent authorities under Article 3 of the DRM:

- Yes
- No

Q 3.2.7 If 'No' was chosen for Q 3.2.6, please explain why your complaint was rejected, as provided for by Article 5 (1) of the DRM, by the competent authorities:

- The case was considered as not being covered by the DRM
- It was considered that there is no question in dispute
- The competent authorities regarded the information submitted as not sufficient
- The timelines required under Article 3 of the DRM were not considered as being respected
- Other

If 'Other' was chosen for Q 3.2.7, please specify:

Q 3.2.8 Were the deadlines respected by the Tax Authorities in providing a decision for the complaint submitted under Article 3 of the DRM:

- Yes
- No

If 'No' was chosen for Q 3.2.8, please specify:

3.2.9 Did the competent authorities resolve the dispute unilaterally as provided for under Article 3 (5) of the DRM:

- Yes
- No

3.2.10 If your complaint was rejected by the Member States under Article 3 of the DRM then did you appeal the complaint according to the national rules of the relevant competent authorities as provided under Article 5 of the DRM:

- Yes
- No

In the case where the procedure is completed under Q 3.2.10, how long did the procedure you have initiated take in months?

In the case where the procedure is not completed under Q 3.2.10, since how long is the procedure ongoing in months?

3.2.11 Has your dispute entered the MAP phase as provided for under Article 4 of the DRM:

- Yes
- No

In the case where procedure is completed under Q 3.2.11, how long did the procedure you have initiated take in months?

In the case where the procedure is completed under 3.2.11, how long did the procedure you have initiated take in months?

Q 3.2.12 Did you make use of the rights of submitting the complaints, replies to a request for additional information, withdrawals and requests only to the competent authority of the Member State in which the affected person is resident as laid down in Article 17 of the DRM Directive[1]?

[1] Taxpayers can avail of this provision if they are (a) an individual; or (b) not a large undertaking and does not form part of a large group (both as defined in Directive 2013/34/EU of the European Parliament and of the Council).

- Yes
- No

Q 3.2.13 Please provide any other information you consider as relevant for the handling of your case under the DRM.

Please upload your file(s)

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

0801b1bc-6828-494c-b8ff-1d06bd5dfc43/240510-PGI-Commissioner_Gentiloni-Dispute_resolution.pdf

Contact

TAXUD-Unit-D2@ec.europa.eu