

Mr. Paolo Gentiloni
European Commissioner for
Economic and Financial Affairs,
Taxation and Customs
European Commission
Rue de la Loi 200, 1049 Brussels,
Belgium

Submitted online

Brussels, 10 May 2024

Subject: Accountancy Europe's feedback on the effectiveness of the EU Dispute Resolution Mechanism (DRM)

Dear Commissioner.

Accountancy Europe is pleased to provide its views on the effectiveness of [Directive \(EU\) 2017/1852](#) on tax dispute resolution mechanisms in the European Union and to suggest how it could be improved.

We present most of our views in terms of a letter as the current [targeted public consultation](#) is focused on the experience of individual entities when using the dispute resolution mechanism.

In our [response](#) to the 2016 public consultation, we strongly supported the development of an EU legal instrument that would help eliminate double taxation within the EU and which would lead to a more coherent and timely treatment of double tax disputes.

Consequently, we welcomed Directive (EU) 2017/1852. Although there has been only a relatively limited amount of time since implementation of Directive to assess its impact, we believe that the effectiveness of the Directive can be improved and the experience of taxpayers using the DRM can be made better and more consistent throughout all Member States.

RESTRICTED SCOPE

Currently the DRM restricts the Mutual Agreement Procedure (MAP) to where there is a common tax rule or law between Member States, such as would exist in a Double Tax Agreement (DTA). Consequently, the DRM does not automatically apply to EU Directives, unless it is included in the DTA or causes double taxation that falls within an arbitration scheme. The different transposition and application of such Directives between the Member States has the potential to lead to many disputes, and this is a particular concern in respect of disputes that could arise as a result of the different interpretation or implementation of the EU's Directive 2022/2523 on OECD Pillar 2 implementation.

In our opinion, the scope of the DRM Directive should be expanded to encompass disputes that arise from the application of other EU legislation on taxation.

INCONSISTENT WILLINGNESS OF MEMBER STATES TO ENGAGE IN MUTUAL AGREEMENT PROCEDURES (MAP)

It is our experience that the willingness of Member States to agree to a MAP varies considerably. Some Member States appear to want to avoid MAPs at all costs. On the other hand, respondents from other Member States report more favourable experience, with those Member States agreeing to around 98% of application for MAPs.

This may be partially explained by the chronic structural shortage of resources that many tax authorities face, together with sometimes limited technical expertise on some complex matters. This makes it less likely that tax authorities will be able to enter into what are considered to be lengthy and resource heavy negotiations.

PRACTICAL ISSUES

There is only limited experience with Directive (EU) 2017/1852 as remedies under this Directive were available only from July 2019 onwards.

Our respondents indicate that the anticipated time scale of settling a MAP is overly long and acts as a disincentive for taxpayers to request dispute resolution. This appears to often be related to the previously mentioned lack of resources in many tax authorities.

On the other hand, whilst the speed with which MAPs are resolved can be improved, feedback received was that a timescale of 2 to 3 years was still more rapid than what could be expected if the dispute was taken to court.

Our respondents have also indicated that certain tax authorities seemingly take advantage of the derogation in Article 16(6) of Directive 2017/1852 (that permits tax administrations to deny access to the dispute resolution process where penalties have been imposed on taxpayers or a process has been opened that could lead to such penalties) to prevent taxpayers from requesting MAPs. Tax authorities are not consistent in interpreting what constitutes cases of tax fraud, willful default, or gross negligence.

The Directive permits the extension of the 2-year deadline to reach an agreement by an additional year if the requesting tax authority provides 'written justification' if they consider that the case is "too complex". We believe that this gives tax authorities too much leeway for requesting an extension and propose that the criteria for requesting an extension are made more specific, thereby restricting 1-year extensions to exceptional cases only.

Sincerely,



Mark Vaessen
President



Olivier Boutellis-Taft
Chief Executive

ABOUT ACCOUNTANCY EUROPE

Accountancy Europe unites 50 professional organisations from 35 countries that represent close to **1 million** professional accountants, auditors and advisors. 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).