

Are you ready for the new EU Tax Dispute Resolution mechanism?

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Are you ready?

The Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union (EU) ("Directive") was published in the Official Journal L 265 on 14 October 2017. It came into effect on 1 January 2019 and should be transposed by the Member States by 1 July 2019.

Its main objective is to create a fairer tax environment by establishing an effective and efficient procedure for resolving disputes for the proper functioning of the internal market. As a supplementary legal instrument, taxpayers should be aware of it in order to better and more effectively seek protection of their rights.

Why the need to implement a tax dispute resolution system in the EU?

Double taxation is a major issue within the single market and creates barriers to cross-border investment, but, in most cases, the attempt to eliminate double taxation results in double non-taxation. Both double taxation and non-taxation distort competition. Around 900 tax dispute resolution procedures are currently ongoing at the EU level, with a total value of more than EUR 10 billion.

Although there are some mechanisms in place, including, for example, the mutual agreement procedure (MAP) within Double Tax Treaties and the European Union Arbitration Convention (90/463/EEC), in practice those do not achieve effective resolution of such disputes in all cases in a timely manner. In addition, for various reasons,

some EU countries have little or even no experience with this mechanism. As a result, there is a need to harmonise the framework for the resolution of disputes. That should contribute to legal certainty and a more business-friendly environment in the EU.

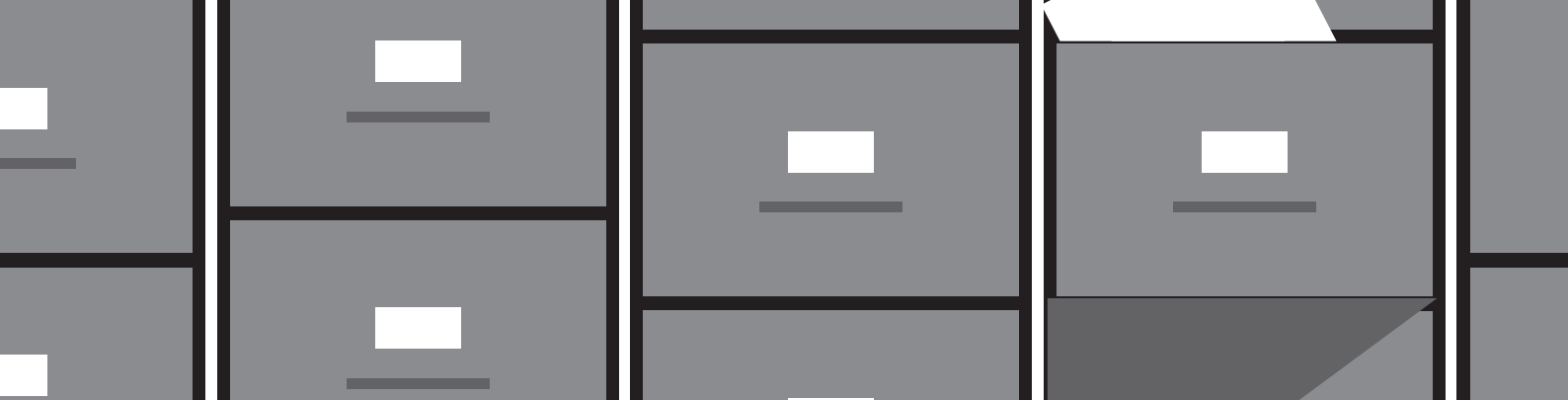
What are the most important procedural mechanisms that the Directive establishes?

The Directive is part of the European Commission Action Plan released in July 2015 on fair and effective taxation of EU businesses, and represents a solution that would eliminate double taxation in the EU until the implementation of the Common Consolidated Corporate Tax Base (CCCTB). The Directive addresses issues that arise when two or more countries claim the right to tax the same income or profits. These situations may occur either due to inconsistencies in

national legislation or because of different interpretations of a double tax treaty.

To summarise the Directive's text from a procedural perspective, we outline below the essential steps a taxpayer would have to take: from the first steps (making a complaint) to the final decision, through the various mechanisms, depending on the various possible situations, taking into account the position of the authorities and taxpayer involved.

This procedure is triggered by a complaint filed with the tax authorities of the Member States concerned by a taxpayer affected by double taxation due to the application of the national tax laws by one of the authorities. If the Member States approve this complaint, they have to reach an agreement within two years (the mutual agreement procedure), with the exceptional possibility of extending this period for



another year at the justified request of any of the Member States involved. If the Member States reach an agreement, their decision is binding for the competent authorities and enforceable for the taxpayer. The most important scenario is when the Member States involved in settling the issue cannot reach an agreement, or they reject or ignore the taxpayer's request to settle the dispute. These are all sensitive elements under the current procedural rules applicable to the elimination of double taxation, which the Directive is trying to solve.

In conclusion, this Directive provides a series of procedural rules extending and refining the present dispute resolution mechanisms in the EU to avoid double taxation that may arise between EU Member States due to the interpretation and application of agreements and conventions.

When does the Directive become applicable? How can we apply it and on which litigation issues?

The Directive has to be transposed into national law so that it can be applied, with the deadline set as 30 June 2019.

As regards the practical application, the procedures set out by the directive will apply to any complaint lodged after 1 July 2019 on disputes relating to income or capital acquired in a financial year starting on or after 1 January 2018.

This Directive is intended to overcome the deficiencies observed in practice, thus we can conclude, without any reservation, that it represents a significant improvement in the current EU tax dispute resolution rules through the implementation of a mandatory tax dispute settlement mechanism, by setting clear deadlines and imposing stronger rules in order to achieve a solution for double taxation issues.

Finally, yet importantly, the perspective of the Court of Justice of the European Union in the interpretation of the matters regulated by the Directive under the procedure of preliminary queries is expected to contribute to increased legal certainty and better protection of the taxpayers involved in such non-litigious tax disputes.

Why us?

Our Tax Controversy and Dispute Resolution Network (TCDR) includes lawyers, accountants, economists and industry sector specialists, all of whom possess top-notch knowledge and experience of individual sectors. We have over 1000 specialists operating around the globe in more than 75 jurisdictions, involved in thousands of cases, who are connected and working together in numerous projects so they can interact and offer support in an efficient manner in cases affecting more than one jurisdiction, such as those regarding double taxation. Our aim is to help you prevent, efficiently manage, and favourably resolve tax inspections and disputes and ultimately to eliminate double taxation through efficient involvement in mutual agreement procedures. A particular strength of our team is that a significant number of our specialists have been involved not only in cases before national and European courts (i.e. the Court of Justice of the European Union and the European Court of Human Rights), but also in mutual agreement procedures. Some of them have even been so involved in their capacity as the competent authority of a specific Member State. Our practices and specialists are in top listed firms/attorneys, positioning in the rankings of the international directories (in Romania, for example, both D&B and Dan Dascălu are listed in Band 1 by both Chambers Global and Legal 500).

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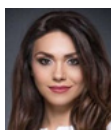
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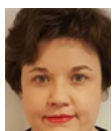
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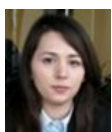
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