Tax dispute resolution mechanisms in the European Union

2016/0338(CNS) - 10/10/2017 - Final act

PURPOSE: to establish an effective dispute resolution mechanism regarding double taxation in the EU.

LEGISLATIVE ACT: Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union.

CONTENT: the Directive **strengthens the mechanisms used to resolve disputes** arising from the interpretation of agreements on the elimination of double taxation. The mechanisms currently provided for in bilateral tax treaties and in the Union Arbitration Convention might not achieve the effective resolution of such disputes in all cases in a timely manner. The aim is to encourage investment by putting in place a more favourable tax environment and reducing costs for businesses.

Scope: while the scope of the Union Arbitration Convention is limited to disputes over transfer pricing and the allocation of profits to permanent establishments, the Directive shall apply to **all tax payers that are subject to taxes on income and capital** covered by bilateral tax treaties and the Union Arbitration Convention.

Tax dispute settlement mechanisms: the purpose of the Directive is to establish a procedure under which, as a first step, the case is submitted to the tax authorities of the Member States concerned, with a view to settling the dispute by using a mutual agreement procedure. In the absence of an agreement within a certain time frame, the case should be submitted to a dispute resolution procedure.

Any affected person shall be entitled to submit a complaint on a question in dispute to each of the competent authorities of each of the Member States concerned, requesting the resolution thereof. Each competent authority shall acknowledge receipt of the complaint within 2 months from the receipt of the complaint and shall inform the competent authorities of the other Member States.

Where the competent authorities of the Member States concerned accept a complaint, they shall endeavour to **resolve the question in dispute by mutual agreement within 2 years**, starting from the last notification of a decision of one of the Member States on the acceptance of the complaint. The period of 2 years may be extended by up to 1 year at the request of a competent authority.

In case of rejection of the complaint by at least one Member State or in the absence of an amicable agreement, the person may request the establishment of an Advisory Commission composed of representatives of the tax authorities concerned and independent persons.

The competent authorities of the Member States concerned may agree to set up an **alternative dispute resolution commission** instead of an Advisory Commission to deliver an opinion on how to resolve the question. The competent authorities of the Member States may also agree to set up an Alternative Dispute Resolution Commission in the form of a committee that is of a permanent nature.

An Advisory Commission or Alternative Dispute Resolution Commission shall **deliver its opinion to the competent authorities** of the Member States concerned no later than 6 months after the date on which it was set up.

The competent authorities of each of the Member States concerned shall take a decision on the acceptance or rejection of the complaint **within 6 months** of the receipt. The competent authorities shall inform the affected person and the competent authorities of the other Member States of their decision without delay. The competent authority may decide to resolve the question in dispute on a unilateral basis, without involving the other competent authorities of the Member States concerned. In such case, the relevant competent authority shall notify the affected person and the other competent authorities of the Member States concerned without delay, following which the proceedings under this Directive shall be terminated.

Each Member State shall provide that its competent authority shall notify the **final decision** on the resolution of the question in dispute to the affected person without delay. The final decision shall be binding on the Member States concerned.

By 30 June 2024 at the latest, the Commission shall assess the implementation of the Directive and report to the Council.

ENTRY INTO FORCE: 3.11.2017. The Directive shall **apply to any complaint submitted from 1 July 2019** onwards relating to questions of dispute relating to income or capital earned in a tax year commencing on or after 1 January 2018. Competent authorities of Member States concerned may however agree to apply this Directive with regard to any complaint that was submitted prior to that day or to earlier tax years.

TRANSPOSITION: no later than 30.6.2019.