

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

Article 3

Complaint

1 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. The complaint shall be submitted within 3 years from the receipt of the first notification of the action resulting in, or that will result in, the question in dispute, regardless of whether the affected person has recourse to the remedies available under the national law of any of the Member States concerned. The affected person shall simultaneously submit the complaint with the same information to each competent authority, and shall indicate in the complaint which other Member States are concerned. The affected person shall ensure that each Member State concerned receives the complaint in at least one of the following languages:

- a one of that Member State's official languages in accordance with national law; or
- b any other language that such a Member State accepts for this purpose.

2 Each competent authority shall acknowledge receipt of the complaint within 2 months from the receipt of the complaint. Each competent authority shall also inform the competent authorities of the other Member States concerned of the receipt of the complaint within 2 months of such receipt. The competent authorities shall inform each other at that time also about the language or languages they intend to use for their communications during the relevant proceedings.

3 The complaint shall only be accepted if, as a first step, the affected person making the complaint provides the competent authorities of each of the Member States concerned with the following information:

- a the name(s), address(es), tax identification number(s) and any other information necessary for identification of the affected person(s) who presented the complaint to the competent authorities and of any other person concerned;
- b the tax periods concerned;
- c details of the relevant facts and circumstances of the case (including details of structure of the transaction and of the relationship between the affected person and the other parties to the relevant transactions, as well as any facts determined in good faith in a mutual binding agreement between the affected person and the tax administration, where applicable) and more specifically, the nature and the date of the actions giving rise to the question in dispute (including, where applicable, details of same income received in the other Member State and of inclusion of such income in the taxable income in the other Member State, and details of the tax charged or that will be charged in relation to such income in the other Member State), as well as the related amounts in the currencies of the Member States concerned, with a copy of any supporting documents;
- d reference to the applicable national rules and to the agreement or convention referred to in Article 1; where more than one agreement or convention is applicable, the affected person making the complaint shall specify which agreement or convention is being interpreted in relation to the relevant question in dispute. Such agreement or convention shall be the applicable agreement or convention for the purposes of this Directive;
- e the following information provided by the affected person who presented the complaint to the competent authorities, together with copies of any supporting documents:

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- (i) an explanation of why the affected person considers that there is a question in dispute;
 - (ii) the details of any appeals and litigation initiated by the affected person regarding the relevant transactions and of any court decisions concerning the question in dispute;
 - (iii) a commitment by the affected person to respond as completely and quickly as possible to all appropriate requests made by a competent authority and to provide any documentation at the request of the competent authorities;
 - (iv) a copy of the final tax assessment decision in the form of a final tax assessment notice, tax audit report or other equivalent document leading to the question in dispute and a copy of any other documents issued by the tax authorities with regard to the question in dispute where relevant;
 - (v) information on any complaint submitted by the affected person under another mutual agreement procedure or under another dispute resolution procedure as defined in Article 16(5) and an express commitment by the affected person that he will abide by the provisions of Article 16(5), if applicable;
- f any specific additional information requested by the competent authorities that is considered necessary to undertake the substantive consideration of the particular case.

4 The competent authorities of each of the Member States concerned may request the information referred to in point (f) of paragraph 3 within 3 months from the receipt of the complaint. Further requests for information may be made during the mutual agreement procedure under Article 4 if the competent authorities consider this to be necessary. National laws regarding the protection of information and the protection of trade, business, industrial or professional secret or trade processes shall apply.

An affected person that receives a request in accordance with point (f) of paragraph 3 shall reply within 3 months of receiving the request. A copy of this reply shall also be sent simultaneously to the competent authorities of the other Member States concerned.

5 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 thereof or within 6 months of the receipt of the information referred to in point (f) of paragraph 3, whichever is later. The competent authorities shall inform the affected person and the competent authorities of the other Member States of their decision without delay.

Within the period of 6 months from the receipt of a complaint, or within 6 months of the receipt of the information referred to in point (f) of paragraph 3, whichever is later, a 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.

6 An affected person that wishes to withdraw a complaint shall simultaneously submit a written notification of withdrawal to each of the competent authorities of the Member States concerned. Such notification shall terminate all proceedings under this Directive with immediate effect. Competent authorities of the Member States who receive such a notification shall inform the other competent authorities of the Member States concerned of the termination of proceedings without delay.

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If for any reason a question in dispute ceases to exist, all proceedings under this Directive shall terminate with immediate effect, and the competent authorities of the Member States concerned shall inform the affected person of this state of affairs and of the general reasons therefore without delay.