



New ways in Luxembourg to better solve international tax disputes

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€ 20,000,000,000 – a conservative estimation of taxes under dispute by the end of 2020 in the European Union (EU). Tax disputes clearly represent a huge threat to the hard-earned profits of companies.

The EU realized this and adopted the [EU directive on tax dispute resolution mechanisms](#): a framework that ensures legal certainty and a business-friendly environment in order to achieve fairer tax systems in the EU.

The [Luxembourg law of 20 December 2019](#) has been published for the transposition of this EU Directive. Below, we summarize the key benefits.

Background

With the implementation of the BEPS project in more than 135 countries, long-standing pillars of the international tax architecture are shaking. It is expected that the resulting tectonic shifts will trigger a tsunami of international tax disputes in the coming decade.

In the past, domestic remedies were usually considered the first recourse. However, national courts are chronically overloaded and often not familiar with international taxation or transfer pricing (TP).

Independent from domestic remedies, taxpayers often initiated mutual agreement procedures (MAP). It can be described as an amicable government-to-government dispute resolution mechanism (in French: *procédure amiable*): competent authorities endeavour to solve tax-treaty related disputes on a mutually-agreed basis.

The OECD and G20 countries agreed to improve this process. As a consequence, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) entered into force. However, the MLI will only affect treaties concluded with other jurisdictions that have ratified the MLI and included that treaty in their list of covered tax agreements. Taxpayers will also have to carefully review the reservations made by the contracting states.

In contrast to the MLI, the Luxembourg law provides a uniform framework to solve tax disputes in the EU with other Member States.

Compared to the EU Arbitration Convention, the new framework is more efficient, particularly regarding access to the MAP, length of the procedure and its effective conclusion.

Key benefits of the new rules

The new rules apply to any disputes relating to Luxembourg income tax, withholding tax, business tax and wealth tax concerning the tax years from 2018 onwards.

The key benefits are the following:

Guaranteed outcome within fixed timeframe

If the authorities do not resolve the dispute on a unilateral basis within six months of receipt of the complaint, they shall endeavour to resolve the dispute by mutual agreement procedure within two years after acceptance of the complaint.

Thereafter, taxpayers can submit their unresolved case to arbitration. Here, the dispute will be resolved by an advisory commission which is chaired by a judge and composed of independent persons of standing alongside tax officials from the competent authorities. No later than six months after its set up, this panel shall deliver an opinion on how to solve the dispute. The opinion will be binding for the authorities, unless they agree on a deviating decision within the following six months.

Broad scope

The new mechanism is not limited to double taxation issues which typically result from TP adjustments, dual residences or attribution of profits to permanent establishments.

Taxpayers can submit any complaints to each competent authority about the interpretation and application of the EU Arbitration Convention and of intra-EU tax treaties. In Luxembourg, the competent authority is the *Administration des contributions directes*.

The complaint may be submitted not only by companies, but also by individuals. These (natural and legal) persons must be resident of a Member State for tax purposes and be directly affected.

Process driven by the taxpayer

The complaint must be submitted within three years after notification of the tax assessment, tax audit report or any other action that results or will result in a tax dispute. The complaint can be pursued in parallel with domestic remedies.

If the authorities unduly delay the procedure, the taxpayer can go to the Luxembourg courts and, for instance, appeal a denial of a complaint or claim the enforcement of a final decision in Luxembourg.

For more practical insights, please consult our presentation on "[Managing transfer pricing disputes](#)".

KPMG Luxembourg comment

The mutual agreement procedure with the potential extension into tax arbitration is an efficient and effective dispute resolution mechanism.

It is particularly suitable to manage TP disputes where double taxation occurs as a result of an upward adjustment in one Member State without any corresponding adjustment in another Member State.

KPMG Luxembourg can assist you in all phases of tax disputes. To solve international and TP disputes, we will invoke and safeguard your taxpayer rights in the mutual agreement and arbitration procedure: from filing the complaint, administration of the MAP, submission to tax arbitration and monitoring the implementation of the final decision. We will support your tax position with a robust TP study and, if necessary, unlock the procedure by lodging domestic remedies with the administrative tribunal in Luxembourg.

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