

Settlement of taxation related disputes in the EU by Mihail Macovei, Avocat (Lawyer)

There are situations in which authorities from different EU member states claim the right to tax certain processes at the same time. As a consequence of this double taxation, companies carrying out cross-border activities could encounter serious fiscal obstacles. To create an efficient legal framework for the settlement of taxation related disputes in the EU, a directive¹ was published in 2017.

Context

The double taxation issue is regulated at the moment by

- (i) the Convention on the elimination of double taxation in connection with the adjustments of profits of associated enterprises² or
- (ii) the mutual agreement procedure from the bilateral tax conventions.

The convention has, however, very limited application, and the provisions regulating the collision between national taxation related disputes contain many ambiguities. The lack of precise procedural regulations for the mutual agreement procedures causes an immense waste of time when implementing them.

Procedural mechanism and deadlines

The directive regulates situations in which the authorities from two or more member-states claim the right to tax income/profit. This occurs either due to contradictory provisions in national law or on the variable interpretation of tax conventions.

The procedure begins as a result of a complaint lodged by the tax payer affected by the double taxation with the tax authorities from the member states involved. As an exception to the rule, the directive provides that natural persons and companies that are neither big companies nor part of a big group³ can lodge the complaint exclusively with the competent authorities of the member state in which they reside; the latter is then obliged to forward the complaint to the competent authorities of all other member states involved.

The complaint must be submitted within three years following the occurrence of the matter leading to the dispute on double taxation (the 'disputed issue' according to the definition provided by Art. 1 of the directive). The authorities confirm the receipt of the complaint within two months; if they find further information is needed, they must ask for it within 3 months after receiving the complaint.

¹ In the Official Journal of the European Union L265 of 14.10.2017 the Council Directive (EU) 2017/ 1852 on tax dispute resolution mechanism in the European Union

² (90/436/EEC)

³ According to the definitions found in the Directive 2013/34/EU of the European Parliament and Council

Decision; mutual agreement procedure

The authorities of each member state involved must or reject the complaint within six months following the receipt of the complaint or the additional information required. If the authorities do not make a decision by then, the complaint will be regarded as approved.

If the complaint is rejected by all authorities in question, the tax subject can appeal against this decision based on the national code of procedure. If all authorities in question approve the complaint directly or on appeal, the authorities must solve the disputed issue within two years, by means of mutual agreement procedures.

If the complaint is rejected by at least one of the competent authorities or approved by all of them, the authorities must – at the request of the complainer – establish an advisory committee consisting of a president, a representative of each competent authority and an independent person chosen from a list by each competent authority. The committee decides upon the complaint.

If one of the competent authorities does not agree with the decision made by the advisory committee, it can request the opening of mutual agreement procedures. The authorities must abide by the decision made within these procedures.

The member states must implement the directive in their national law by 30th June 2019. From 1st July 2019, it will be applied to every complaint concerning disputes on income or estate earned or provided after 1st January 2018.

Conclusion

The directive provides procedural regulations meant to develop and improve the already existing mechanism for settlement of disputes over double taxation. Through the new regulations for the member states, the precise deadlines and the implementation of a mandatory mechanism for dispute settlement, the directive (also the preamble) provides legal certainty and a company-friendly investment environment. All things considered, it represents a clear improvement of the provisions on taxation related disputes within the EU.

Contact and further information:



STALFORT Legal. Tax. Audit.
Bucharest – Bistrița – Sibiu

Office Bucharest:

T.: +40 – 21 – 301 03 53
F: +40 – 21 – 315 78 36
M: bukarest@stalfort.ro
www.stalfort.ro