

## Luxembourg transposes EU Tax Dispute Resolution Directive into domestic law

---

### EY Tax News Update: Global Edition

EY's Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

---

### Executive summary

Luxembourg's law of 20 December 2019 (the Law) transposing into national law Council Directive (EU) 2017/1852 of 10 October 2017 (the Directive) on tax dispute resolution mechanisms in the European Union (EU) entered into force on 27 December 2019. In line with the Directive, the Law aims to ensure the resolution of tax disputes arising from a divergent interpretation or application of agreements or conventions that provide for the elimination of double taxation of income and capital. The Law provides for compulsory and binding arbitration between Luxembourg and other EU Member States, clear time limits, an obligation to reach results and the possibility to reach out to courts where the dispute resolution procedure is blocked.

### Detailed discussion

#### Scope

The scope of the Law is limited to the sole intra-EU context, i.e., to tax disputes between Luxembourg and one or more EU Member States arising from the interpretation or application of agreements and conventions that provide for the elimination of double taxation of income and, where applicable, capital.

It should be noted that Luxembourg has, in the context of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (the MLI), opted for mandatory binding arbitration, meaning that a dispute arising with a non-EU jurisdiction with which there is a double taxation treaty in place and which has also opted for mandatory arbitration, may be submitted to arbitration under the MLI.

### Complaint

The text allows for the procedure to be initiated by the taxpayer by submission of a complaint simultaneously to the competent authority of Luxembourg, being the Direct Tax Administration (*Administration des contributions directes*), and to the competent authority of each Member State concerned, within three years from the receipt of the first notification of the action that results in or will result in the question in dispute. For the complaint to be admissible, the competent authorities of Luxembourg and of each Member State concerned must also be provided with certain information and copies of supporting documents, such as, among other things, information necessary for the identification of the affected person(s), reference to the applicable domestic rules and an explanation of why the affected person considers that there is a question in dispute.

### Competent authority decision concerning the complaint

Once the complaint has been introduced, the Direct Tax Administration must make a decision on the acceptance or rejection of the complaint within six months and inform the affected person and the competent authority of the other Member State(s) concerned of its decision. In absence of any decision within the aforementioned period, the claim is deemed accepted.

A complaint may be rejected if: (i) it does not comprise all the required information or documentation; (ii) there is no question in dispute; or (iii) the complaint is not submitted within the three-year deadline. Where the Direct Tax Administration and the competent authority of the other Member State(s) concerned have all rejected the complaint, the affected person may appeal against the decision in front of the administrative Tribunal. Where the complaint has been accepted by one competent authority, but rejected by at least one other competent authority, the affected person can request the set-up of an Advisory Commission (see below).

The Direct Tax Administration may decide to resolve the question in dispute on a unilateral basis, without involving the competent authority of the Member State(s) concerned.

The notification of such a unilateral resolution brings the proceedings concerning the dispute resolution mechanisms to an end.

### Mutual agreement procedure (MAP)

Where the complaint has been accepted by the Direct Tax Administration and the competent authority of the other Member State(s) concerned, they shall endeavor to resolve the question in dispute by mutual agreement within two years, extendible for one additional year.

The agreement reached will be binding on the Direct Tax Administration and enforceable by the affected person, subject to the affected person accepting the decision and renouncing the right to any administrative or judicial proceedings. Where such proceedings have already been initiated, the decision becomes binding and enforceable only once the affected person has provided evidence that action has been taken to terminate those proceedings.

Where no agreement has been reached, the Direct Tax Administration will inform the affected person indicating the general reasons for the failure to reach agreement.

### Advisory Commission and Alternative Dispute Resolution Commission

Where the complaint submitted by an affected person was rejected by at least once, but not by all of the competent authorities of the Member States concerned or where no agreement was reached under the MAP, an affected person may request, within a determined deadline, the set-up of an Advisory Commission, composed of a chair, at least one representative of each competent authority concerned and at least one independent person of standing appointed by each competent authority of the Member State(s) concerned. The Advisory Commission will:

- (i) Where the complaint that was submitted has been rejected by at least one competent authority, adopt a decision on the acceptance of the complaint within six months from the date of its establishment. In the case of acceptance of the complaint, the MAP will be initiated by the Direct Tax Administration or the competent authority of the other Member State(s) concerned. If none of the competent authorities initiates the procedure within a given timeframe, the Advisory Commission will deliver an opinion on how to resolve the question in dispute.
- (ii) Where the competent authorities are not able to reach agreement, the Advisory Commission will deliver an opinion on how to resolve the question in dispute.

The Direct Tax Administration may also agree with the competent authority of the other Member State(s) concerned to set up an Alternative Dispute Resolution Commission instead of an Advisory Commission to deliver an opinion on how to resolve the question in dispute. This Commission may apply any dispute resolution processes or technique to solve the question in a binding manner, provided that such a process has been agreed to by the Direct Tax Administration with the competent authority of the other Member State(s) concerned.

The Advisory Commission or the Alternative Dispute Resolution Commission will deliver its opinion within a period of six months, which may be extended by an additional three months. Following the notification of the opinion, the Direct Tax Administration will have an additional six months' time to agree with the competent authority of the other concerned Member State(s) on how to resolve the question in dispute and thus to make a final decision. It should be noted that the competent authorities may make a decision which deviates from the opinion of the Advisory Commission or Alternative Dispute Resolution Commission. However, if they fail to reach an agreement, the opinion will become binding for the competent authorities.

The final decision will be implemented, subject to the affected person accepting the final decision and renouncing the right to any domestic remedy, within 60 days from the date the final decision is notified to the affected person.

### **Interaction with national proceedings**

An affected person always has the possibility to use the tax dispute resolution mechanisms provided under the Law, even if the administrative measure that gave rise to a question in dispute has become final under domestic law. From a Luxembourg perspective, the MAP and the final decision will be considered as a new fact that entitles the Luxembourg Direct Tax Administration, based on the provisions of the domestic General Tax Law, to issue a new tax assessment, even if the statute of limitations period has elapsed.

Where a decision on a question in dispute has been rendered by the Luxembourg administrative Tribunal or Court, this must be notified by the Luxembourg Direct Tax Administration to the competent authority of the other Member State(s) concerned. This notification implies that:

- (i) The MAP is terminated, unless an agreement on the same question in dispute has been reached beforehand.

- (ii) The affected person can no longer request the set-up of an Advisory Commission if the question in dispute has remained unresolved during the whole duration of the MAP.
- (iii) The dispute resolution process by the Advisory Commission is terminated if the decision of the Tribunal or Court has been rendered at any time after the affected person has requested the set-up of an Advisory Commission but before the Advisory Commission or the Alternative Dispute Resolution Commission has delivered its opinion.

It should also be noted that the introduction of a complaint under the provisions of the Law terminates any other procedure on the same question in dispute and launched on the basis of another agreement or convention, such as the 1990 EU Arbitration Convention (90/436/EEC) or a double taxation treaty.

### **Special provisions for individuals and smaller undertakings**

The Law provides a simplified procedure for individuals and small and medium-sized enterprises by allowing them to submit their complaint, replies to a request for additional information and withdrawals only to the Luxembourg Direct Tax Administration, if the affected person is a resident of Luxembourg. The Direct Tax Administration must notify the competent authorities of the other EU Member States concerned within two months of receipt of such communications.

### **Publicity**

The competent authorities may agree to publish the final decisions in their entirety, subject to consent of each of the affected persons concerned. In the absence of such agreement or consent, an anonymized abstract of the final decision will be published.

### **Entry into force**

The Law will apply to any complaint relating to questions of dispute with respect to income or capital earned in a tax year commencing on or after 1 January 2018. The competent authority of Luxembourg and of each of the other Member States concerned may however agree on a case-by-case basis to apply the provisions with regard to any complaint that was submitted prior to the date of entry into force of the Law or relating to questions of dispute with respect to income or capital earned in a tax year commencing before 1 January 2018.

For additional information with respect to this Alert, please contact the following:

**Ernst & Young Tax Advisory Services Sàrl, Luxembourg City**

- ▶ Bart Van Droogenbroek, *Tax Leader* [bart.van.droogenbroek@lu.ey.com](mailto:bart.van.droogenbroek@lu.ey.com)
- ▶ Marc Schmitz, *Tax Policy & Controversy Leader* [marc.schmitz@lu.ey.com](mailto:marc.schmitz@lu.ey.com)
- ▶ Olivier Bertrand, *Private Equity Tax Leader* [olivier.bertrand@lu.ey.com](mailto:olivier.bertrand@lu.ey.com)
- ▶ Dietmar Klos, *Real Estate Tax Leader* [dietmar.klos@lu.ey.com](mailto:dietmar.klos@lu.ey.com)
- ▶ Fernando Longares, *TMT & Life Science Tax Leader* [fernando.longares@lu.ey.com](mailto:fernando.longares@lu.ey.com)
- ▶ Christian Schlessler, *Commercial & Public Sector Tax Leader* [christian.schlessler@lu.ey.com](mailto:christian.schlessler@lu.ey.com)
- ▶ Jacques Linon, *Banking & Insurance Tax Leader* [jacques.linon@lu.ey.com](mailto:jacques.linon@lu.ey.com)
- ▶ Vincent Rémy, *Wealth & Asset Management Tax Leader* [vincent.remy@lu.ey.com](mailto:vincent.remy@lu.ey.com)
- ▶ Nicolas Gillet, *Transfer Pricing Leader* [nicolas.gillet@lu.ey.com](mailto:nicolas.gillet@lu.ey.com)
- ▶ Elmar Schwickerath, *Global Compliance & Reporting Leader* [elmar.schwickerath@lu.ey.com](mailto:elmar.schwickerath@lu.ey.com)

**Ernst & Young LLP (United States), Financial Services International Tax Desks – Luxembourg, New York**

- ▶ Jurjan Wouda Kuipers [jurjan.woudakuipers@ey.com](mailto:jurjan.woudakuipers@ey.com)

**Ernst & Young LLP (United States), Luxembourg Tax Desk, New York**

- ▶ Serge Huysmans [serge.huysmans@ey.com](mailto:serge.huysmans@ey.com)
- ▶ Xavier Picha [xavier.picha@ey.com](mailto:xavier.picha@ey.com)

**Ernst & Young LLP (United States), Luxembourg Tax Desk, Chicago**

- ▶ Alexandre J. Pouchard [alexandre.pouchard@ey.com](mailto:alexandre.pouchard@ey.com)

**Ernst & Young LLP (United States), Luxembourg Tax Desk, San Jose**

- ▶ Andres Ramirez-Gaston [andres.ramirezgaston@ey.com](mailto:andres.ramirezgaston@ey.com)

**About EY**

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit [ey.com](http://ey.com).

© 2020 EYGM Limited.  
All Rights Reserved.

EYG no. 000305-20Gbl

1508-1600216 NY  
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

**[ey.com](http://ey.com)**