



Valsts ieņēmumu
dienests

Methodological Material

On Dispute Resolution under a Mutual Agreement Procedure with Non-EU Countries



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Mutual Agreement Procedure ('MAP') is one of international instruments for cooperation between competent authorities of countries, which is available to taxpayers in accordance with the tax laws and regulations of the Republic of Latvia. It is a procedure, under which an issue related to taxation not in accordance with the provisions of the covered tax agreement is resolved. In practice, the mutual agreement procedure is most frequently applied to eliminate double taxation to taxpayer's income and capital. Thus, the phrase 'elimination of double taxation' used further in the text shall mean the elimination of taxation not in accordance with the provisions of the covered tax agreement.

Mutual agreement procedures with EU Member States are performed in accordance with Chapter XV of the Law On Taxes and Duties.

In cases of **double taxation** disputes with non-EU countries, with which the Republic of Latvia entered into an international treaty¹ on the elimination of double taxation and the prevention of fiscal evasion with regard to taxes on income and capital (hereinafter referred to as 'tax conventions')², disputes are resolved based on tax conventions and the Law On Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting³ (hereinafter referred to as the 'Multilateral Convention'). Tax conventions usually include the following regulations:

- 1) the term for the submission and acceptance of an application on the dispute for the elimination of double taxation;**
- 2) the jurisdiction, to which a person can apply with an application on the dispute;**
- 3) the obligation of competent authorities to endeavour to resolve the dispute;**
- 4) the obligation of competent authorities to implement the results of the agreement in a timely manner;**
- 5) the right of competent authorities to eliminate any complications or doubts, which can occur in interpreting or applying the convention, via agreement;**
- 6) the right of competent authorities to consult together for the elimination of double taxation in cases not provided for in the convention;**
- 7) the right of competent authorities to contact each other directly;**

¹ Section 13 of the Law On International Treaties of the Republic of Latvia. Available at <https://likumi.lv/ta/id/57840-par-latvijas-republikas-starptautiskajiem-likumiem>

² Information published by the Ministry of Finance of the Republic of Latvia on the status of conventions signed by the Republic of Latvia on the elimination of double taxation and the prevention of fiscal evasion. Available at

https://www.fm.gov.lv/lv/sadalas/nodoklu_politika/nodoklu_konvencijas/divpusejo_konvenciju_statuss/

³ Law On Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting Available at <https://likumi.lv/ta/id/308276-par-daudzpusejo-konvenciju-nodoklu-bazes-samazinasanas-un-pelnas-novirzisanas-noversanas-pasakumu-ieviesanai-attieciba-uz-nodoklu-konvencijam>

8) the right of the taxpayer to request to convene arbitration, if provided for by the respective tax convention.

Multilateral Convention

Entered into force on 1 February 2020 and supplements the previously applied mutual agreement procedure regulations included in the tax conventions already signed by the Republic of Latvia to ensure the introduction of the minimum standard and recommendations determined in Action 14 (Improvement of Dispute Resolution) included in the Action Plan of the Organisation for Economic Co-operation and Development ('OECD') on Base Erosion and Profit Shifting ('BEPS') and the application thereof with regard to the signed tax conventions within the shortest period possible and in a unified manner possible.⁴ During the mutual agreement procedure, the Republic of Latvia, based on the Multilateral Convention, applies the **single**:

- 1) term for the submission and acceptance of an application on the dispute for the elimination of double taxation;**
- 2) obligation of competent authorities to endeavour to resolve the dispute;**
- 3) obligation of competent authorities to implement the results of the agreement in a timely manner;**
- 4) right of competent authorities to eliminate any complications or doubts, which can occur in interpreting or applying the convention, via agreement;**
- 5) right of competent authorities to consult together for the elimination of double taxation in cases not provided for in the convention;**
- 6) right of competent authorities to contact each other directly.**

The norms of the Multilateral Convention are applied only if:

- both contracting states have chosen to apply the Multilateral Convention;
- both contracting states have specified each other as the contracting party to the Multilateral Convention⁵;
- no reserve of the contracting party on the non-application of the relevant norm of the Multilateral Convention is determined.

Additional information on the application of norms of the Multilateral Convention is available on the OECD website⁶.

⁴ Information published by the Ministry of Finance of the Republic of Latvia on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. Available at https://fm.gov.lv/lv/sadalas/nodoklu_politika/nodoklu_konvencijas/daudzpusēja_nodoklu_konvencija_multilateral_instrument_mli/

⁵ Latvia and the respective contracting state, notifying the Depository of the chosen tax agreements, have specified each other as the contracting party to the Multilateral Convention and have entered into a tax agreement (thus, becoming contracting parties to the Multilateral Convention).

⁶ OECD. MLI Matching Database (beta). Available at <https://www.oecd.org/tax/treaties/mli-matching-database.htm>

Single Approach to the Mutual Agreement Procedure in Cases of Disputes with Non-EU Countries

1. If transactions controlled by a Latvian taxpayer⁷, which result in a transfer pricing dispute, have been performed with a company, which is a resident in the contracting state of the tax convention, which is a non-EU country, the taxpayer shall submit an application on the dispute for the elimination of double taxation to the respective competent authority in accordance with the provisions of the respective applicable tax convention, i.e., the State Revenue Service ('SRS')⁸, or in the contracting state, which is a non-EU country. The aforementioned applies also to the submission of an application in all other cases, which have resulted in taxation not in accordance with the provisions of the respective tax convention. The term for the submission of an application is usually three years following the first notification of actions, which have resulted in taxation not in accordance with the provisions of the respective tax convention (for example, adoption of the decision on the results of a tax review (audit)).

2. There are no restrictions or relief with regard to the form of business activity carried out by a taxpayer. Thus, the taxpayer, who identifies a situation resulting in taxation not in accordance with the provisions of the respective tax convention with a non-EU country, may submit an application for the elimination of double taxation in accordance with the provisions of the applicable tax convention.

3. During the dispute procedure, the taxpayer submits an application with a request for the initiation of a mutual agreement procedure for the elimination of double taxation to the competent authority of the particular state or competent authorities of both states in accordance with the provisions of the respective applicable tax convention.

4. The taxpayer provides information necessary for the initiation of a mutual agreement procedure to the competent authority of the respective contracting state no later than within the application submission term specified in the respective tax convention (usually within three years following the first notification of actions, which have resulted in taxation not in accordance with the provisions of the tax convention).

5. If the competent authority is the SRS, prior to adopting the decision on the rejection of an application on the dispute, the SRS will notify the competent authority of the other contracting state of the reasons, due to which the taxpayer's application on the examination of the dispute could not be satisfied, and ask the respective competent authority to express its opinion within the framework of the mutual consultation.

6. If no agreement is reached with the competent authority of the other contracting state of the tax convention within two years following the initiation of the case on the elimination of double taxation, the SRS will decide whether to continue the mutual agreement procedure or to

⁷ Section 1, Clause 29¹ of the Law On Taxes and Duties. Available at <https://likumi.lv/ta/id/33946-par-nodokliem-un-nodevam>

⁸ Ibid., Section 18, Paragraph one, Clause 32. Available at <https://likumi.lv/ta/id/33946-par-nodokliem-un-nodevam>

initiate the arbitration procedure, if provided for by the particular tax convention.

7. If, before the SRS and the competent authority of the other contracting state have reached an agreement on the resolution of the dispute under the procedure, the final court ruling enters into force, the SRS will notify the competent authority of the other contracting state of the court ruling and change its position in the mutual agreement procedure, taking into account the resolutions in the final court ruling.

8. The SRS will not publish the achieved final decisions of the mutual agreement procedure with a non-EU country.

9. With regard to other regulation matters of the procedure in disputes with non-EU countries, the SRS will rely on the provisions of Chapter XV of the Law On Taxes and Duties, insofar it does not contradict the respective tax convention. The SRS recommends including the information specified in Section 120, Paragraph three of the Law On Taxes and Duties in the taxpayer's application on the dispute for the initiation of a mutual agreement procedure for the elimination of double taxation.

List of Competent Authorities and Tax Conventions

- The authority, to which an application must be submitted in accordance with the provisions of the respective applicable tax convention, can be found on the OECD website⁹.
- Applicable tax conventions are available on the SRS website¹⁰.

Consultations to Taxpayers

The SRS is obliged to consult taxpayers on matters concerning the application of tax laws and regulations, which apply to a particular taxpayer and have occurred as a result of this taxpayer's taxable activities. Thus, in case of any uncertainties, prior to preparing an application on the initiation of a mutual agreement procedure intended for non-EU countries, we encourage to apply for a detailed consultation by filling in a form on the SRS website¹¹.

⁹ Mutual Agreement Procedure profiles. Available at <https://www.oecd.org/tax/dispute/country-map-profiles.htm>

¹⁰ State Revenue Service – International Agreement and Administrative Cooperation – Tax Conventions. Available at <https://www.vid.gov.lv/lv/starptautiskie-ligumi-un-administrativa-sadarbiba>

¹¹ State Revenue Service – Application for a Detailed Consultation. Available at <https://www.vid.gov.lv/lv/pieteikums-padzilinatai-konsultacijai>