

**Law Decree n. 49 dated  
10.06.2020 (Official Gazette n.  
146 dated 10.06.2020)**



# Implementation of Council Directive (EU) 2017/1852 of 10.10.2017 on tax dispute resolution mechanisms in the European Union

## Entry into force

The Decree will become effective on 26.06.2020. The provisions it contains apply to applications for mutual agreement procedures submitted starting from 01.07.2019 concerning issues relevant to income or capital relevant to the tax period starting on 01.01.2018 and to the subsequent tax periods.

## Scope of application

The norms regulate mutual agreement procedures and other dispute resolution procedures between the Italian tax authorities and the tax authorities of other Member States arising from the interpretation and application of international agreements and conventions that provide for the elimination of double taxation, of which Italy is part, and of Convention 90/436/EEC of 23.07.1990 on the elimination of double taxation in connection with the adjustments of profits of associated enterprises.

## Application to initiate a mutual agreement procedure

In order to initiate the procedure, the affected person - i.e. any person resident for tax purposes in the State territory or in another Member State and whose taxation is directly affected by the disputed issue - is required to submit an application to both the Italian Revenue Office and the competent authorities in the other Member States concerned, at the same time.

## Terms

The application is to be submitted within 3 years from the date of notification of the action which gave rise or could give rise to a disputed issue. In case of a tax assessment report, the term is calculated starting from the notification of the subsequent tax assessment notice.

## Relationships with domestic tax litigation procedures

The preliminary initiation of the domestic tax litigation procedures is not required. The affected person can, in any case, recur to the remedies available under the domestic law and require the suspension of the pending trial pursuant to art. 39, para. 1-ter, letter b) of Legislative Decree n. 546/1992, as well as of the collection pending judgment (art. 15 of Presidential Decree n. 602/1973, amended for the purpose).

However, the application to initiate a mutual agreement procedure cannot be submitted if on the disputed issue a judgement by the relevant Tax Court or a Court decision further to a conciliation pursuant to articles 48 and 48-bis of Legislative Decree n. 546/1992 have already been issued.

## Relationships with domestic administrative procedures

The possibility to submit an application to initiate a mutual agreement procedure is not precluded by tax administrative proceedings making the tax assessed final.

## Feedback

The Revenue Office acknowledges the receipt of the application within 2 months from its receipt and within the same term it notifies it to the authorities of the other Member States concerned.

## Contents

The application must contain all information necessary for a careful examination of the facts, such as by way of example but not limited to:

1. information needed for the identification of the affected persons who have submitted the application and of any other person concerned;
2. the tax periods concerned;
3. specific details of the case;
4. copy of possible documents providing evidence of the details above;
5. reason why the affected persons consider that there is a disputed issue, details of any appeals and litigations initiated by the affected persons;
6. information on any other application submitted to initiate tax dispute resolution proceedings, as well as the express commitment of the affected persons not to proceed with the pending proceeding on the same disputed issue

## Preliminary investigation

Within 3 months from the receipt of the application, the Revenue Office can ask for further specific information to the affected person who is required to provide it within 3 months from the receipt of the request.

## Decision on the acceptance of the application and appeal

Within 6 months from the receipt of the application (or from the date of receipt of the requested additional information), the Revenue Office adopts a resolution on its acceptance or substantiated rejection (because not received promptly, with incomplete information, having as object an issue not disputed or already resolved upon by a domestic Court). Should no notification be given within said deadline, the application is to be considered as accepted.

In case the proceeding is suspended, the 6 month term will start from the suspension date.

The affected person can appeal against the Tax Commission in case of rejection of the application to initiate a mutual agreement procedure (included among the challengeable deeds listed under art. 19 of Legislative Decree 546/1992).

## Resolution on a unilateral basis

Within 6 months from the receipt of the application (or from the date of receipt of the requested additional information), the Revenue Office can decide whether to resolve the issue on a unilateral basis without involving the other competent authorities of the Member States concerned, notifying them, as well as the affected persons promptly.

## Agreement

### Terms

Within 2 years from the acceptance of the application by one of the Member States - a term extendable by up to 1 year upon a substantiated request - the Revenue Office and the competent authorities of the concerned Member States shall endeavour to reach an agreement.

The resolution adopted - or the reasons for the failure to reach an agreement - are notified to the affected person within 30 days from the date of conclusion of the agreement.

Should the proceeding be suspended, the 2 year term will start from the suspension date.

## Relationships with domestic tax litigation procedures

Should a final judgement or a Court judgement further to a conciliation pursuant to articles 48 and 48-bis of Legislative Decree n. 546/1992 have already been issued on the disputed issue, the Revenue Office will notify the decision to the competent authorities of the other member States concerned and the mutual agreement procedure will terminate starting from the date of such notification.

## Relationships with domestic administrative procedures

Should the disputed issue, originated by an inspection by the Italian tax authorities, have been settled, also with concessions, the Revenue Office may adjust the taxes due (either increasing or decreasing said amount) further to the initiation of the mutual agreement procedure.

## Advisory commission

### Setting-up

The affected person can submit to the Revenue Office and to the competent authorities of the other Member States concerned a request to set up an Advisory Commission to access the dispute resolution procedure.

Within 120 days from the receipt of the request, the Revenue Office shall notify the affected persons about the rules of functioning, the date in which the opinion on the settlement of the disputed issue is adopted and the references to the any applicable legal provisions. Should the Revenue Office fail to notify the above, the independent persons and the chairman of the Commission will see to it.

### Scope of application

The Advisory Commission is set up in the following cases:

1. when the application to initiate the mutual agreement procedure is rejected by at least one – but not all – of the competent authorities of the other Member States concerned, with specific bonds;
2. when the application to initiate the mutual agreement procedure is rejected by all of the competent authorities of the other Member States concerned and a judgment favourable to the affected person is issued following the appeal made by the affected person against the rejection decision;

3. when the competent authorities of the Member States concerned accept the application to initiate the mutual agreement procedure but do not manage to reach an agreement within the 2-years' term from the acceptance of the application.

### Term

The request for the setting up of the Advisory Commission shall be made within 50 days from the date of receipt of the communication of rejection, or failure to reach agreement, or delivery of the favourable judgment.

## Relationships with domestic tax litigation procedures

If a final judgment or a Court judgment following a settlement under articles 48 and 48-bis of Legislative Decree no. 546/1992 is issued on the dispute:

- before filing the request for the setting up of an Advisory Commission, the Revenue Office shall inform the competent authorities of the other Member States concerned on the preclusive effects of the decision concerning the access to the dispute resolution procedure;
- after filing the request for the setting up of an Advisory Commission, but before the Commission notifies its opinion to the Revenue Office, the Revenue Office shall inform the competent authorities of the other Member states and the Commission on the effects or the decision which ends the dispute resolution procedure.

### Setting up

The Advisory Commission shall be set up not later than 120 days from the receipt of such request, and the affected person shall be informed without delay. If the Advisory Commission is not set up within the above term, the affected person can turn to the chair of the Regional (second instance) Tax Court of Lazio to request its setting up. The chair of the Regional Tax Court of Lazio decides through a claimable disposition in compliance with art. 28 of Legislative Decree no. 546/1992.

## Dispute resolution

The Advisory Commission shall adopt a decision on the acceptance of the application to initiate the mutual agreement procedure (to be notified to the competent authorities of the other Member States concerned within 30 days from its adoption) or an opinion on how to resolve the question in dispute within 6 months from the date of its establishment – the term is extendible by further 3 months.

## Alternative dispute resolution commission

### Setting up

The competent authorities of the Member States concerned may agree to set up an Alternative Dispute Resolution Commission – also in the form of a Standing Committee – instead of an Advisory Commission to deliver an opinion on how to resolve the question in dispute.

### Dispute resolution

The Commission may apply, instead of an independent opinion process applied by the Advisory Commission, other types of dispute resolution processes or techniques to solve the question in dispute in a binding manner.

### Costs of proceedings

Costs that are incurred by the affected person shall not be borne by Member States.

## Effects of the opinion of the advisory commission or of the alternative dispute resolution commission

### Bond

The Revenue Office and the other competent authorities of the Member States concerned shall agree on how to resolve the question in dispute within 6 months from the notification of the opinion of the Advisory Commission or the Alternative Dispute Resolution Commission. The competent authorities may take a decision which deviates from the above opinion, but if they fail to reach an agreement as to how to resolve the question in dispute, they shall be bound by that opinion.

### Terms and appeal

The Revenue Office shall notify the final decision on the resolution of the question in dispute to the affected person within 30 days from the decision having been taken. Otherwise, the affected person may appeal to the competent Tax Court to obtain such notification.

### Relationships with domestic litigation procedures

If a final judgment or a Court judgment following a settlement under articles 48 and 48-bis of Legislative Decree no. 546/1992 is issued on the dispute after the notification of the opinion of the Advisory Commission or the Alternative Dispute Resolution Commission, the Revenue Office shall inform the competent authorities of the other Member States concerned and the above Commissions on the effects of the decision that terminates the dispute resolution procedure.

### Relationships with domestic administrative procedures

If the question in dispute, originated from an inspection by the Italian Tax Authorities, was subject to a settlement – even a beneficial one – the Revenue Office, if appropriate, adjusts the amount of taxes due (either increasing or decreasing such amount) following the mutual agreement procedure.



## Execution of decisions

In execution of those decisions implying an adjustment in income or tax, the Revenue Office shall provide for the refund or relief of undue taxes or for the collection of due taxes.

### Acceptance by the affected person

The above decisions are implemented provided that the affected person accepts them in writing within 60 days from the relevant notification and renounce the right of other remedies. In case there is a pending national litigation, for the purposes of the implementation of the decision, the affected person shall provide evidence, within 60 days from the date on which such decision was notified, that the act of waiver of litigation and of other remedies has been filed with the competent judicial body.

### Collection of taxes due

For the purposes of the assessment and collection of taxes due, the limitation terms under art. 43 of Presidential Decree no. 600/1973 are doubled.

Penalties – unless concessional ones are already defined – and interest are applied on higher taxes starting from the date on which the decision is adopted. Amounts already paid are taken into account.

### Refund or relief of taxes

The Revenue Office provides for the refund or relief of undue taxes. Only if the tax claim is completely cancelled, the refund of penalties is allowed upon the filing of a proper application by the affected person.

### Final taxation

The refund, relief or collection are applied also if referred to taxes that became final in Italy.

### Appeal

If the decision is not executed by the Revenue Office, the affected person may appeal to the competent Tax Court to obtain the enforcement of the decision.

## Gross penalties: exclusion

The Revenue Office shall reject access to the dispute resolution procedure in case penalties for one of the crimes under Title II of Legislative Decree no. 74/2000 are inflicted, with reference to the domestic regulations, in relation to the income or capital that is subject to adjustments. In case proceedings were started within the domestic regulations for one of the above conducts and these proceedings are being conducted simultaneously with one of the mutual agreement or dispute resolution procedures, the Revenue Office may suspend the above proceedings as from the date of acceptance of the application to initiate the mutual agreement procedure until the date of the final outcome of those proceedings.

## Operating terms and procedures

Operating terms and procedures will be defined through proper orders of the director of the Revenue Office.



Our professionals would be pleased to provide you with any further information you may need.

Please refer to Clever Desk on our website - [bgt-grantthornton.it](https://www.bgt-grantthornton.it) - for further details on any issues concerning COVID-19.

