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EU JOINT TRANSFER PRICING FORUM

Final Report on Improving the Functioning of the Arbitration Convention

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I. Introduction

1. The EU Joint Transfer Pricing Forum (JTPF) has carried out a comprehensive monitoring exercise of the practical functioning of Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises¹ (Arbitration Convention, AC) and the revised Code of Conduct for the effective implementation of the Arbitration Convention (CoC)². In this process the JTPF has drawn on experiences of Member States (MS) and non-government members (NGM) of the Forum, as well as on that of members of advisory commissions under the AC.
2. The monitoring has demonstrated that the AC and its related CoC provide for a well-balanced approach to dispute resolution. Guidance is available on important aspects, while at the same time a certain degree of flexibility is maintained as regards the allocation of powers to parties involved and in view of the administrative burden the procedure creates. Nevertheless, it was found that certain aspects could be improved. This Report addresses relevant issues identified in the monitoring process by way of proposing amendments to the CoC.

II. JTPF analysis and recommendations

Preamble of the Code of Conduct

3. To emphasise the commitment of all parties involved in transfer pricing dispute resolution to the effective application of the Arbitration Convention the preamble of the revised Code of Conduct will be supplemented with a principle on behavioural aspects. The preamble will also emphasize the commitment to the confidentiality of government to government communication.

JTPF recommendation (revised preamble of CoC)

“Without prejudice to the respective spheres of competence of the Member States and the European Union, this revised Code of Conduct concerns the implementation of the Arbitration Convention and certain related issues concerning mutual agreement procedures under double taxation treaties between Member States. The application of the Arbitration Convention is governed by mutual trust, cooperation and transparency between all parties involved as well as by recognising the need to maintain a sustainable and reliable procedure for resolution of disputes in a timely and resource effective manner. However, due respect should be given to the confidentiality of government-to-government communication. All parties are committed to seeking the avoidance of double taxation as defined in Article 4 AC and abide by the letter and the

¹ OJ L 225, 20.8.1990, p.10.

² OJ C 322, 30.12.2009, p.1.

spirit of the AC. This includes that Member States of the European Union provide their competent authorities with sufficient resources in terms of personnel, funding, training etc. to carry out their mandate, i.e. resolving cases of double taxation in accordance with the Arbitration Convention.”

1. Scope of the Convention (Chapter I, Articles 1 and 2 of the AC)

1.1 Application of the AC in specific cases

4. Article 6 (1) AC, 2nd sentence, provides that a “case must be presented within three years of the first notification of the action which results or is likely to result in double taxation within the meaning of Article 1”. The application of the AC in specific situations such as the absence of actual payment of tax after a transfer pricing adjustment and any changes in the status of a taxpayer subject to double taxation which may lead to the disappearance of the actual taxpayer are discussed below.

a) Application of the AC in the absence of an actual payment of tax

5. The question arises whether a case is eligible for a Mutual Agreement Procedure (MAP) under the AC only once an adjustment results in a cash payment. This is pertinent, for example, in cases where the entity subject to the transfer pricing adjustment has losses carried forward against which an upward adjustment could be offset or in cases where because of group relief an actual tax payment is not due. In such situations a case should nevertheless be eligible for MAP under the AC.

JTPF recommendation (new sub point to point 1 in CoC)

“An action which results or is likely to result in double taxation within the meaning of Article 1 of the Arbitration Convention does not require that the transfer pricing adjustment within the meaning of Article 4 of the Convention leads to an actual payment of tax. Therefore cases where the entity subject to the adjustment within the meaning of Article 4 has losses carried forward against which an upward adjustment could be offset or cases where because of group relief no actual tax payment is due and similar situations, are within the scope of the Arbitration Convention.”

b) Application of the AC in case of changes in the status of the taxpayer/entity subject to double taxation

6. It is conceivable that the status of an entity subject to a transfer pricing adjustment may change by the time a case can be presented before the Competent Authority of a Member State. Such changes in the status of a taxpayer/entity may involve mergers, restructurings, liquidation or other changes. In such situations a case should nevertheless be eligible for MAP under the AC.

JTPF recommendation (new sub point to point 1 in CoC)

“Cases submitted for resolution under the AC generally regard earlier years. This means that the entities or enterprises involved may have merged, restructured, entered into liquidation or changed otherwise after the years in which double taxation has

arisen. This in and of itself should not disallow the case to be handled under the Arbitration Convention, as relief of double taxation is generally still important³.”

1.2 Application of the AC dependent on a MAP under a DTC

7. The AC applies to issues of double taxation which arise from profit adjustments between associated enterprises in the meaning of Article 1 (1) and (3) and Article 4 (1) AC and from profit adjustments to permanent establishments (PE) in the meaning of Article 1 (2) and (3) and Article 4 (2) AC. The JTPF discussed cases where the application of the AC itself and the way it is applied depends on issues not covered by the AC. For example: MS have different views on whether a PE in the meaning of Article 5 of the OECD Model Tax Convention (OECD MTC) exists and, if so, how much profit should be allocated to it by virtue of Article 7 OECD MTC.
8. The issue of whether a PE exists (Article 5 OECD MTC) is indeed not covered by the AC. Disputes on this issue may therefore only be solved by other means, e.g. MAP under an applicable Double Taxation Convention (DTC). However, once the existence of a PE is established, the AC should be applicable to solve an eventual dispute on the amount of profit attributable to this PE.

JTPF recommendation (new point 2 in CoC):

“If access to the Arbitration Convention or the treatment of cases under the Arbitration Convention depends directly on the result of a mutual agreement procedure under an applicable Double Taxation Convention, care should be taken to ensure that the deadline under Article 6(1) of the Arbitration Convention does not expire. The enterprise should file separate requests for a mutual agreement procedure under the Arbitration Convention and a mutual agreement procedure available under the applicable Double Taxation Convention. The requests may be combined in one letter. The two-year period referred to in Article 7 (1) AC will not start before the issue addressed under the Double Taxation Convention is solved.

1.3 Access to the AC and remedies against denial of access

9. A Member State will not grant access to the AC if the case presented by the enterprise is not covered by the scope of the AC or excluded from the AC under Article 8 AC. The AC itself does not provide remedies against denial of access. However, some MS already have domestic legal remedies for determining whether a denial of access to the AC by their administrative bodies is justified⁴. For reasons of transparency and fairness, a competent authority should inform the other competent authority(ies) when access to the Arbitration Convention is denied and provide them with the reasons for the denial. The competent authorities involved should exchange their views so as to

³ Reservation: In case of termination without legal successor (liquidation), in Hungary there is no possibility after the termination to modify the tax liability. The fact of ceasing without a legal successor excludes the enforcement of any kind of possibility for correction based on double taxation.”

⁴ See Member States' Transfer Pricing Profiles at:

http://ec.europa.eu/taxation_customs/taxation/company_tax/transfer_pricing/forum/index_en.htm

try, where possible, to reach a common position on whether the denial of access to the Arbitration Convention is justified.

JTPF recommendation (new point 5 in CoC)

“Member States should consider providing domestic legal remedies for determining whether the denial of access to the Arbitration Convention by their administrative bodies is justified⁵.”

10. When an enterprise considers that the principles of Article 4 AC are not observed it can request access to the Arbitration Convention. The request can be made by either one of the two enterprises specified in Article 1 AC, but has to be presented to the competent authority of the Contracting State of which it is an enterprise or in which its permanent establishment is situated. Point 7.3 (h) CoC indicates that the competent authority receiving the request decides first about whether minimum information in the meaning of point 7.6 (a) CoC (with or without an additional request (point 7.6 (a) (viii) CoC) is submitted and the claim is well founded. However, it would be difficult to solve a case by mutual agreement when one competent authority considers that the minimum information has not been submitted. This may have direct consequences on the length of time to obtain relief and whether such relief can ultimately be provided.

JTPF recommendation (addition to point 7.3 e) CoC

The competent authority will acknowledge receipt of a taxpayer's request to initiate a mutual agreement procedure within one month from the receipt of the request and at the same time inform the competent authority(ies) of the other Member State(s) involved in the case attaching a copy of the taxpayer's request. The competent authorities should reach a mutual understanding on whether they consider the minimum information as submitted. A competent authority should inform the other competent authority(ies) when access to the Arbitration Convention is denied and provide them with the reasons for the denial. The competent authorities involved should exchange their views so as to try, where possible, to reach a common position on whether the denial of access to the Arbitration Convention is justified.

⁵ Reservations:

Italy expresses its disagreement with this recommendation, given that this possibility of challenging the position of the Competent Authority is not provided for in the Italian legislation.

Poland considers MAP a non-formalized procedure to which Polish tax procedural legislation does not apply and therefore no possibility exists to provide legal remedies for determining whether the denial of access to the Arbitration Convention by its administrative bodies is justified.

According to the Swedish national legislation it is not possible to appeal against denial of access to the Arbitration Convention.

2. General provisions (Chapter II, Articles 3 to 14 AC)

2.1. Informing enterprises of their rights under the AC

11. Drawing on Best Practice No. 9 of the OECD Manual on Effective Mutual Agreement Procedures (OECD MEMAP) the JTPF recommends informing concerned enterprises of their rights under the AC in case of an adjustment. Such written notice or advice could be issued at the time a proposed adjustment is formally notified to the enterprise and could include general guidance on the availability of a MAP and how to go about protecting access to this mechanism. Some tax administrations have implemented the practice of advising enterprises of both their domestic and AC rights and obligations at the time of the proposed adjustment, with successful results and positive feedback.

JTPF recommendation (new point 7.1 a) in CoC)

“A tax administration making an adjustment is encouraged to inform the enterprise in a timely manner of its rights under the Arbitration Convention, including about any time limits in the Convention for initiating a mutual agreement procedure. The onus for making a timely request in order to preserve access to the mutual agreement procedure rests with the enterprise and enterprises should take all reasonable steps to ensure that time limits do not expire.”

2.2. Independence of CA from audit

12. In line with Best Practice No. 23 of the OECD MEMAP the JTPF recommends that in order to enhance the independence of a subsequent review of a case by a competent authority (CA), CAs maintain a level of autonomy from the audit function of a tax administration.

JTPF recommendation (new point 7.1 c) in CoC)

“Although competent authorities and audit (function) may belong to the same tax administration, competent authorities should maintain a degree of autonomy from the audit function of the tax administration in order to ensure the independence of any subsequent review of a case by the competent authority. The guiding principle should be that the competent authority’s function is to ensure a fair and appropriate application of the Arbitration Convention, not to seek to uphold all adjustments proposed by the tax authorities of its Member State.”

2.3 Requesting and providing information

13. The JTPF recognises that tax administrations and taxpayers benefit from a cooperative and fully transparent mutual agreement procedure while giving due respect to the confidentiality of government-to-government communication. Therefore all necessary information available at the time of the request to initiate the mutual agreement procedure should be provided by the enterprise to the tax administration(s).

JTPF recommendation (new point 7.1 (h) CoC)

“h) The enterprise should provide all necessary information available at the time of the request to initiate the mutual agreement procedure. Requests for additional information and responses to those requests should be complete, well-targeted and submitted without unnecessary delay (responses should be sent to both CAs). Failure to co-operate during any part of the procedure of the Arbitration Convention may have direct consequences on the length of time needed to obtain relief and whether such relief can ultimately be provided.”

2.4. No waiver of rights for audit settlements or blocking MAP access through unilateral APAs

14. Drawing on Best Practice No. 19 of the OECD MEMAP the JTPF recommends that blocking MAP access via audit settlements or unilateral Advance Pricing Agreements (APAs) should be avoided.

JTPF recommendation (new point 7.1 d) in CoC)

“Enterprises and tax administrations should not include waiver of access to a mutual agreement procedure in audit settlements and unilateral APAs, as it would be inappropriate for two parties (the enterprise and one tax administration) to exclude a third party (the other tax administration) from the final resolution of a file in which they had an interest.”

2.5. Implication of the new Article 7 OECD MTC (2010)

15. In 2008 the OECD concluded its work on the attribution of profits to permanent establishments with publishing the report “Attribution of Profits to Permanent Establishments”. The report represents the outcome of the work on how the “separate arm’s length enterprise” provision of Article 7 should be applied. The conclusions of the Report were implemented in the OECD MTC in two stages.
16. The first stage was the revision of the Commentary on Article 7 OECD MTC as Article 7 read before 22 July 2010. This stage was completed in the 2008 update of the OECD MTC. It was aimed at implementing the conclusions of the report that do not conflict with the interpretation previously provided in the OECD commentary on Article 7 OECD MTC. The second stage was the finalization of a completely new Article 7 OECD MTC with related commentary changes in the 2010 update of the OECD MTC.
17. The JTPF discussed the implications of these developments on the interpretation of Article 4 (2) AC.

JTPF recommendation (new point 6 b) in CoC)

“Article 4(2) of the Arbitration Convention should be interpreted in the spirit of the most recent version of Article 7 of the OECD Model Tax Convention on Income and on Capital and the relevant Commentary. This will not apply in cases where the bilateral Double Taxation Convention between the Member States involved has a

different wording. In cases where Member States have concluded bilateral Double Taxation Conventions, Article 4(2) should have the same meaning as the relevant Article on attributing profits to permanent establishments in the applicable Double Taxation Convention, taking into account the OECD commentary on the provisions included in the Double Taxation Convention. In cases where there is no bilateral Double Taxation Convention between the Member States involved, the competent authorities should seek to reach an agreement on a common approach in the first phase of the procedure under the Arbitration Convention. If the Member States fail to reach an agreement, the interpretation of Article 7 in the Commentary of the July 2008 version of the OECD Model Tax Convention should apply.⁶

2.6. Disputes likely to arise

18. The AC foresees that for cases where double taxation is likely to arise, MAP requests under the AC may already be submitted in advance. This possibility may, on the one hand, be seen as providing the advantage to address disputes at an early point in time. At the same time, however, an early submission of a MAP request may be seen as impeding efforts to solve the issue before MAP. An additional consideration is that the workload for CAs in dealing with cases where double taxation did actually arise is usually rather high.
19. Certain tools are already available for dealing with disputes likely to arise:
- a) For situations where certainty is sought for **future transactions** taxpayers may have recourse to an APA procedure⁷.
 - b) For situations where following a transaction an enterprise identifies a **risk that a dispute may raise**, the JTPF report on transfer pricing risk management⁸ recommends that the enterprise should have the possibility to communicate with the tax administration at an early point in time (R4) and tax administrations may consider joint action (R5 and R9).
 - c) For situations where a Contracting State **intends** to make an adjustment, the procedure in Article 5 AC is available. This procedure foresees that the enterprises in both States liaise between the two (or more) tax administrations involved.
 - d) For situations where the action of a Contracting State is **likely to result in double taxation** the taxpayer may file for MAP under the AC (Article 6 (1) AC).

2.7. MAP request and informing the other CA involved

20. The JTPF considered that it would be helpful if both CAs involved were informed by the enterprise about a MAP request under the AC.

⁶ Reservations: Denmark cannot accept the last sentence of recommendation 6 b): “If the Member States fail to reach an agreement, the interpretation of Article 7 in the Commentary of the July 2008 version of the OECD Model Tax Convention should apply”.

France cannot subscribe to the last sentence of the recommendation provided in point 6b).

⁷ Guidelines for Advance Pricing Agreements in the EU, COM(2007) 71 final

⁸ Commission Communication on the work of the EU Joint Transfer Pricing Forum in the period July 2012 to January 2014, COM(2014) 315.

JTPF recommendation (new point 7.3 d) in CoC)

“Enterprises should submit a copy of their request for a mutual agreement procedure under the Arbitration Convention to the other competent authority involved at the same time and with the same set of information as to the competent authority to which the request is addressed in accordance with Article 6 (1) of the Arbitration Convention. Where appropriate and allowed, this might be done through electronic means. In cases where the request is not made in a common working language, the enterprise should provide a translation of the request into a common working language. The fact that a copy of the request was submitted by the enterprise does not replace the obligation of the competent authority to inform the other competent authority about receiving the request under point 7.3 (e) nor should it be understood as limiting a competent authority’s efforts to come to a satisfactory solution itself within the meaning of Article 6 (2) of the Arbitration Convention.”

2.8. Guidance on Multilateral MAP

21. The JTPF recognises the increasing importance of multilateral MAP, between Member States and between Member States and non EU States. The JTPFs work on EU triangular cases⁹ and the report on Non-EU triangular cases form the basis for multilateral approaches. It is suggested that the JTPF takes up further work in the future.

2.9. Informing the enterprise during MAP

22. The CoC already contains provisions (point 6.3 (b), (f) and (g)) that enterprises will be kept informed about: “all significant developments”; whether the case is considered as being well founded; the initiation of a MAP; whether the request is made within the time limits foreseen under the AC; and, about the starting point of the two-year period.

2.10. Implications of MAP results for other years

23. The procedure for MAP requests which are linked to a former MAP can usefully be streamlined to the benefit of both taxpayers and tax administrations.

JTPF recommendation (new point 7.3 i) in CoC)

“Where a new request by an enterprise for a mutual agreement procedure is linked to issues which are already covered by an ongoing mutual agreement procedure with the same enterprise, competent authorities should, where appropriate, consider treating the new request together with the ongoing mutual agreement procedure. Where a request for a mutual agreement procedure is linked to issues which have already been covered in another mutual agreement procedure regarding the same enterprise, competent authorities should typically consider applying the outcome in the earlier mutual agreement procedure to the new request and where appropriate, to apply that outcome.”

⁹ See point 3 CoC and point 7.5 CoC

2.11. The three-year period

24. According to Article 6 (1) of the AC, a case under the AC must be presented before the relevant competent authority within three years of the first notification of the action which results, or is likely to result, in double taxation within the meaning of Article 1 AC. The term first notification as the starting point of the three-year period under Article 6 (1) AC is determined differently by MS. Possible discrepancies may create insecurity for enterprises as regards time limits. For the determination of the starting point, the understanding of the term first notification by the MS whose action resulted in double taxation should be decisive. Annex 2 to this report (to be annexed to the revised CoC) contains information on the starting point of the three-year period for each Member State.
25. To ensure that a case which is presented within three years of the first notification of the action under Article 6(1) cannot be rejected as out of time where additional information requested by the concerned State is received after the three-year time limit, a distinction is made between “presentation” of a case in the meaning of Article 6 (1) AC and “submission” of a case for the purpose of Article 7 (1) AC, as elaborated in new point 7.6 (a) CoC.

JTPF recommendation (addition to amended point 7.2 in CoC)

“The date of the 'first tax assessment notice or equivalent which results or is likely to result in double taxation within the meaning of Article 1 of the Arbitration Convention, e.g. due to a transfer pricing adjustment'¹⁰, is considered as the starting point for the three-year period. A request is considered as presented for the purposes of the three-year period under the second sentence of Article 6 (1) AC when it contains the information listed in (point 7.6 (a) (i) – (vii) CoC. As far as transfer pricing cases are concerned, Member States are recommended to apply this definition also to the determination of the three-year period as provided for in Article 25.1 of the OECD Model Tax Convention on Income and on Capital and implemented in the double taxation treaties between Member States.”

2.12. Guidance on position papers

26. The existing guidance on position papers contained in point 6.4 CoC can benefit from further clarification.

JTPF recommendation (amended point 7.4 in CoC)

Exchange of position papers

- (a) Member States undertake that when a mutual agreement procedure has been initiated, the competent authority of the country in which a tax assessment, i.e. a final decision of the tax administration on the income, or equivalent has been

¹⁰ Reservation: The tax authority Member from Italy considers 'the date of the first tax assessment notice or equivalent reflecting a transfer pricing adjustment which results or is likely to result in double taxation within the meaning of Article 1' as the starting point of the three-year period, since the application of the existing Arbitration Convention should be limited to those cases where there is a transfer pricing 'adjustment'.

made, or is intended to be made, which contains an adjustment that results, or is likely to result, in double taxation within the meaning of Article 1 of the Arbitration Convention, will send a position paper to the competent authority(ies) of the other Member State(s) involved in the case. The position paper will contain the information relevant for understanding the case under consideration. Depending on the facts and circumstances of the case the position paper may set out e.g.:

(i) General information:

- legal name, address and taxpayer identification number of the person requesting assistance, its related persons in the other country, if applicable, and the basis for determining the association;
- the contact details of the competent authority official in charge of the case
- broad overview of the issue, transactions, business, and basis for the adjustment
- the tax years affected
- amount of income and tax adjusted in each tax year, if applicable
- summary of relevant information from the original tax return

(ii) the case made by the person making the request;

- description of the exact nature of the issue or adjustment
- if relevant, calculations with supporting data (these may include financial and economic data and reports relied upon, explanatory narratives as well as taxpayer documents and records where relevant and appropriate).

(iii) the competent authority's view of the merits of the case, e.g. why it believes that double taxation has occurred or is likely to occur;

(iv) how the competent authority suggests that case might be resolved with a view to the elimination of double taxation together with a full explanation of the proposal.

(b) The position paper will contain a full justification of the assessment or adjustment and will be accompanied by basic documentation supporting the competent authority's position and a list of all other documents used for the adjustment, e.g.

- outline of comparable transactions and comparability adjustments;
- description of the methodology employed for the adjustment; and
- an explanation of the appropriateness of the transfer pricing methodology employed for the adjustment (i.e. an explanation why it believes the adjustment achieves an arm's length outcome; identification of tested party, if applicable; industry and functional analysis, if a relevant study is not already included elsewhere in the taxpayer's submission).

(c) The position paper will be sent to the competent authority(ies) of the other Member State(s) involved in the case as quickly as possible taking account of the complexity of the particular case and no later than four months from the latest of the following dates:

- (i) the date of the tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent;
 - (ii) the date on which the competent authority receives the request and the minimum information as stated under point 7.6(a).
- (d) Member States undertake that, where a competent authority of a country in which no tax assessment or equivalent has been made, or is not intended to be made, which results, or is likely to result, in double taxation within the meaning of Article 1 of the Arbitration Convention, e.g. due to a transfer pricing adjustment, receives a position paper from another competent authority, it will respond as quickly as possible taking account of the complexity of the particular case and no later than six months after receipt of the position paper
- (e) The response should take one of the following two forms:
- (i) if the competent authority believes that double taxation has occurred, or is likely to occur, and agrees with the remedy proposed in the position paper, it will inform the other competent authority(ies) accordingly and make such adjustments or allow such relief as quickly as possible;
 - (ii) if the competent authority does not believe that double taxation has occurred, or is likely to occur, or does not agree with the remedy proposed in the position paper, it will send a responding position paper to the other competent authority(ies) setting out its reasons and proposing an indicative time scale for dealing with the case taking into account its complexity. To enable the competent authorities to identify the areas of disagreement and to understand the position of the responding competent authority, a rebuttal or response paper could include e.g.:
 - indication of the areas or issues where the competent authorities are in agreement or disagreement;
 - requests for additional information and explanations necessary to clarify particular issues;
 - presentation of other or additional information considered pertinent to the case, but not raised in the initial position paper; and
 - submission of proposals or views to resolve the issue.
- The proposal will include, whenever appropriate, a date for a face-to-face meeting, which should take place no later than 18 months from the latest of the following dates:
- (aa) the date of the tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent;
 - (bb) the date on which the competent authority receives the request and the minimum information as stated under point 7.6(a).
- (f) Member States will further undertake any appropriate steps to speed up all procedures wherever possible. In this respect, Member States should envisage to organise regularly, and at least once a year, face-to-face-meetings between their competent authorities to discuss pending mutual agreement procedures (provided that the number of cases justifies such regular meetings).”

2.13 Information required for the start of the two-year period (Article 7 (1) AC)

27. Point 7.6 (a) (vii) CoC provides that for the purpose of Article 7 (1) AC, a case will be regarded as having been submitted when the enterprise provides any specific additional information requested by the competent authority within 2 months of the receipt of the enterprise's request. Instances were reported where the information requested was not provided in a sufficient and timely manner or was considered as overly burdensome and comprehensive by the taxpayer. The JTPF is of the view that the case-specific nature of transfer pricing sets limits to providing prescriptive guidance on the specific kind of information or certain time limits. Implementing specific procedures for determining whether information requested is necessary or provided in a sufficient manner is regarded as disproportionate. Instead the common interest in solving cases of double taxation in a timely and efficient manner and the principles of well-targeted and appropriate action are being recalled. For reasons of transparency, it is recommended that competent authorities inform the other competent authorities about the additional information requested.
28. Nevertheless, as already provided in the CoC, the enterprise should undertake to respond as completely and quickly as possible to all reasonable and appropriate requests made by a competent authority and have documentation at the disposal of the competent authorities as referred to in point 7.6 (a) (vii).

JTPF recommendation (addition to point 7.6 (a) (viii) CoC new)

“(viii) any specific additional information requested by the competent authority within two months upon receipt of the taxpayer's request. Requests for additional information should be well-targeted and responses to those requests should be complete and submitted without unnecessary delay to both competent authorities. A competent authority should inform the other competent authority(ies) about additional information requested where appropriate.”

2.14. MAP outcome and domestic remedies

29. CAs have a legitimate concern that - in case of domestic court or administrative proceedings carried out in parallel to a MAP - an agreement reached in MAP may be in contradiction with a relevant court decision (or the outcome of other available domestic remedies). Possible risks of abuse also represent a valid concern.

JTPF recommendation (new point 7.7 in CoC)

“If the terms and conditions of an agreement reached in a mutual agreement procedure are not satisfactory to the enterprise, the enterprise may withdraw its request for a mutual agreement procedure under the Arbitration Convention. When at the time an agreement is reached under the procedure of Article 6(2) of the Arbitration Convention, domestic remedies are still pending, the implementation of this agreement should be subject to its acceptance by the enterprise and the enterprise's withdrawal from domestic remedies such as appeals concerning the issues settled in a mutual agreement procedure under the Arbitration Convention.”

30. Member States' practices in this respect are indicated in the Member States Transfer Pricing profiles¹¹ published on the JTPF website.

2.15. Serious penalties

31. Dispute resolution under the AC does not need to be initiated and may be suspended if one of the enterprises involved is subject to a “serious penalty” for the transactions giving rise to the profit adjustment (Article 8). MS have made unilateral declarations to the AC on what they consider a serious penalty in the meaning of Article 8 (1) AC.
32. The CoC makes it clear that the application of the AC is not automatically excluded in case of a serious penalty. Access to the AC should only be denied when a serious penalty is imposed in exceptional cases like fraud and similar situations. It is, therefore, not the penalty imposed as such which bars access to the AC, but the actual type of underlying behavior of the taxpayer which led to the penalty.

JTPF recommendation (amended point 8 in CoC)

“As Article 8(1) provides for flexibility in refusing to give access to the Arbitration Convention due to the imposition of a serious penalty, and considering the practical experience acquired since 1995, Member States should deny access to the Arbitration Convention when serious penalties are applied only in exceptional cases. Exceptional cases include tax fraud, wilful default and gross negligence¹².”

2.16. Improving the “second phase” of the Arbitration Convention

a) Composition and functioning of advisory commissions

33. The composition of advisory commissions is governed by Article 9(1) of the AC. Article 11 (2) AC provides that “The advisory commission shall adopt its opinion by a simple majority of its members”.
34. The presence of competent authorities on the panel and especially their right to vote on the opinion of the advisory commission was criticised by 3 of the 4 chairmen of advisory commissions from whom the JTPF sought feedback¹³ in 2013 on the functioning of the “second phase” of the Arbitration Convention. They pointed out that although it is of great value to have CAs on the commission in order to give independent members full information on all aspects of the case including their own position and the reasons for it, their status as full members of the advisory commission

¹¹ See

http://ec.europa.eu/taxation_customs/taxation/company_tax/transfer_pricing/forum/index_en.htm#membership

¹² Reservations: France will apply the recommendation provided in point 8 considering that it includes in particular the penalties mentioned in the declaration made when signing the Arbitration Convention.

Referring to its individual declaration on Article 8 on „serious penalty”, Hungary would like to reserve its right to refuse access to the Arbitration Convention not only in case of criminal penalties established in relation to criminal tax offenses but also in case of imposing tax penalties in the lack of establishing criminal liability.

¹³ See document [JTPF/010/2013/EN](#)

with voting power seems to be an obstacle to the efficient functioning of the commission. In particular, chairmen of advisory commissions pointed out that:

- the principles of arbitration suggest that interested parties do not sit on an arbitration panel;
- representatives of CAs can delay the proceedings of the advisory commission, as they take much of the meeting time by continuing exchanges of view;
- presence of CAs’ representatives may inhibit necessary discussion on the issues among the independent members;
- representatives of CAs do not want usually to prejudice their jobs by agreeing with the other side’s view; a compromise is therefore unlikely and this means in practice that the decision of the commission is generally taken by the (three) independent members only, unless they agree to fully support the view of one of the Member States. If CAs are not present in the advisory commission, the independent persons of standing and the Chair could decide on an opinion in a more expedite and efficient manner.

35. From a Member State’s point of view it is important that representatives of CAs are full members of the advisory commission, so as to ensure that their case is presented well. CAs’ representatives on the panel are normally two and MS consider that this is adequate, as it allows them to send to the advisory commission two professionals with different profiles (e.g., a lawyer and an economist). The possibility to appoint only one representative per CA is already foreseen in Article 9(1).

36. Revising the voting powers within the advisory commission and giving independent persons of standing the possibility to hold separate deliberations was considered to require changes to the AC.

b) Opening statement by the enterprise and auditor(s)

37. The chairmen of advisory commissions surveyed by the JTPF in 2013 argued that hearing enterprises and auditors at the outset of the arbitration procedure can usefully inform and facilitate the deliberations of advisory commissions. In the case of hearings of enterprises, this involves interviewing not only tax experts, but also persons occupying high operational and management positions in the enterprise - familiar with the business strategy, international market conditions and the reasons behind the enterprise’s transfer pricing strategy.

38. The AC and CoC already envisage the possibility that auditors and enterprises may appear before the advisory commission (Article 10 AC and former point 7.3 (d) CoC – now point 9.3 CoC). The formulation “[...] the advisory commission may request Member States and in particular the Member State that issued the first tax assessment notice, [...] to appear before the advisory commission”, is intended to clarify that the advisory commission may request the respective service in charge in a Member State to appear before the advisory commission. It was considered that it would nevertheless be useful to explicitly inform enterprises of the possibility to state their case before the advisory commission.

JTPF recommendation (amended point 9.3 (d) in CoC)

“(d) Whilst respecting Article 10 of the Arbitration Convention, the advisory commission may request Member States and in particular the Member State that issued the first tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent, which resulted, or may result, in double taxation within the meaning of Article 1 of the Arbitration Convention, to appear before the advisory commission. At the outset of the arbitration procedure each of the enterprises involved should be informed by their respective competent authorities of their right to make a statement before the advisory commission.”

c) Preparation of the arbitration procedure

39. The 6-month period envisaged under the AC for an advisory commission to deliver an opinion can be considered generally appropriate. However, at the beginning of this period sufficient information should already be available to the commission, so that it can deliver its opinion in a timely and efficient manner. The time until an advisory commission is established should be used by the competent authorities to compile all relevant information, so that it is already available at the beginning of the procedure.

JTPF recommendation (amended point 9.2 (f) in CoC)

“(f) Member States will provide the advisory commission before its first meeting, with all relevant documentation and information and in particular all documents, reports, correspondence and conclusions used during the mutual agreement procedure. To assist the advisory commission in completing its work in a timely and efficient manner, the competent authorities will use the time period needed to establish the advisory commission to collect and prepare all necessary information, so that it is already available at the outset of the procedure.”

d) Remuneration of chairmen and independent members of advisory commissions

40. Point 7.3 (f) (ii) CoC provides for a remuneration in the amount of 1000 EUR per meeting date per person. Although it is recognised that members of advisory commissions do substantial work outside official meetings of the advisory commission (reading written material, exchanging emails, making conference calls, agreeing the wording of the opinion, travelling) the CoC maintains that remuneration should be made on the basis of meeting days and not by reference to actual time spent on the case due to the objectivity of this criterion.

e) Follow-up to advisory commissions' opinions

41. According to Article 12 AC the competent authorities concerned are expected to take a decision which eliminates the double taxation within 6 months of the delivery of the advisory commission's opinion. Their decision may actually deviate from the advisory commission's opinion, but if they fail to reach an agreement, they are obliged to act in accordance with the advisory commission's opinion. Acceptance by the enterprise of this decision is not formally required under the AC and the decision may therefore be implemented without the enterprise's agreement. However, it can be expected that an enterprise would generally be satisfied when double taxation is removed.

42. Nevertheless, the relation between the AC and domestic remedies needs to be considered in this context. Article 7(1) AC provides that where a case has been submitted to a court or a tribunal, the two-year period shall be computed from the date on which the judgement of the final court of appeal was given. Article 7 (2) AC allows Member State to initiate or continue judicial proceedings and Article 7 (3) AC provides - for cases where the domestic law does not allow the competent authority to derogate from the decision of their juridical bodies - that an advisory commission shall not be set up before the time provided for an appeal has expired or the right for an appeal has been withdrawn.
43. Where there is a risk for inconsistencies between the outcome of the procedure under the AC and domestic remedies, the MS concerned may need to take the necessary action to prevent this, e.g. by requiring the enterprise to withdraw from the domestic remedies and appeals which concern the issues to be settled under the AC before entering the “second phase”.

2.17. Tax collection and interest charges

44. It is recognised that tax collection should be suspended during dispute resolution procedures under the AC and that Member States’ different approaches to interest charges and refunds during that procedure do not adversely affect enterprises. Point 8 CoC provides for measures aimed to ensure that the same conditions as those available for domestic appeals or litigation procedures are available in case of filing for a MAP procedure under the AC. The CoC leaves MS a choice between three different approaches to interest charges and refunds. When MS involved in a case choose each a different approach to interest charges and refunds it is appropriate that they should attempt to eliminate any resulting asymmetry.

JTPF recommendation (improved language of point 10 in CoC)

“(a) Member States are recommended to take all necessary measures to ensure that the suspension of tax collection during cross-border dispute resolution procedures under the Arbitration Convention can be obtained by enterprises engaged in such procedures under the same conditions as those engaged in a domestic appeals or litigation procedure although these measures may imply legislative changes in some Member States. It would be appropriate for Member States to extend these measures to the cross-border dispute resolution procedures under double taxation treaties between Member States.

(b) Considering that, during mutual agreement procedure negotiations, a taxpayer should not be adversely affected by the existence of different approaches to interest charges and refunds during the time it takes to complete the mutual agreement procedure, Member States are recommended to apply one of the following approaches:

- (i) tax to be released for collection and repaid without attracting any interest; or
- (ii) tax to be released for collection and repaid with interest; or
- (iii) each case to be dealt with on its merits in terms of charging or repaying interest (possibly during the mutual agreement procedure),

When, nevertheless, asymmetry results, MS should seek to eliminate any resulting asymmetry in the mutual agreement procedure where possible. Enterprises are advised

to explicitly request that the interest issue is addressed in the mutual agreement procedure.”¹⁴

45. Annex 3 to this report contains information on the state of play in MS as regards suspension of tax collection and on interest charges. The information contained in annex 3 will be made available on the webpage on the JTPF.

III. Concluding remarks

46. All parties involved in dispute resolution under the AC have an interest that double taxation is removed in a timely and resource effective manner. This Draft Report proposes amendments to the CoC to this effect. New guidance respects the fact that resolving transfer pricing disputes often requires case-specific approaches. It also rests on the principle that the application of the AC is governed by mutual trust between all parties involved and the recognition of the need to maintain this sustainable and reliable procedure for resolution of disputes.
47. Beyond the amendments to the Code of Conduct proposed in this Revised Draft Report the JTPF notes that based on the findings of the AC and CoC monitoring process carried out, further amendments to the Code of Conduct and/or the AC itself may be discussed in the future. Possible issues for consideration include:
- Composition of advisory commissions (Article 9 AC), voting rights, possibility for independent persons of standing to hold separate deliberations¹⁵
 - Alternative approaches to arbitration (e.g. last best offer approach, also called “baseball arbitration”) compared to the independent opinion approach currently provided under the AC (Article 11)
 - Possibility for CAs to mutually cancel the procedure under the AC in certain cases
 - Application of the AC to establish the existence of a permanent establishment (Article 5 OECD MTC)¹⁶.
 - Application of the AC to issues of thin capitalisation¹⁷
 - Application of the AC to secondary adjustments¹⁸

¹⁴ Reservation: In Italy the amount of interests to be reimbursed or to be collected must be calculated in accordance with domestic legislation, which cannot be modified by an existing mutual agreement procedure.

¹⁵ Reservation: Sweden does not see a need to do further work regarding the composition of the advisory commissions.

¹⁶ Reservations: Italy does not deem it appropriate to extend the scope of the Arbitration Convention to establish the existence of a permanent establishment.

According to Sweden introducing a substantive rule in the Arbitration Convention to establish whether a permanent establishment exists could come into conflict with a corresponding provision of a tax treaty leading to “double non taxation” for a country applying the exemption method.

¹⁷ Reservations: Italy does not deem it appropriate to extend the scope of the Arbitration Convention to thin capitalisation cases. In order to apply the Arbitration Convention to thin capitalisation situations, it is necessary to reach consensus on the fact that the rules at issue must comply with the arm’s length principle. The point is how to eliminate double taxation, according to the Arbitration Convention, when one of the two countries considers the thin capitalisation domestic rules as anti-abuse rules having nothing to do with the arm’s length principle. In addition to this, it should not be disregarded that, as for thin capitalisation rules, there are no internationally accepted rules to be followed by the advisory commission.

- Interaction of domestic legal remedies and the AC
- Application of the AC to permanent establishments of non-EU enterprises.

¹⁸ Reservations: Italy does not deem it appropriate to extend the scope of the Arbitration Convention to secondary adjustments. The elimination of double taxation caused by secondary adjustments should be discussed in the mutual agreement procedure in accordance with the bilateral Treaty. Austria does not wish to discuss an extension of the scope of the Arbitration Convention to secondary adjustments.

ANNEX 1

Revised Code of Conduct for the effective implementation of the Arbitration Convention

[Recitals]

Without prejudice to the respective spheres of competence of the Member States and the European Union, this revised Code of Conduct concerns the implementation of the Arbitration Convention and certain related issues concerning mutual agreement procedures under double taxation treaties between Member States. The application of the Arbitration Convention is governed by mutual trust, cooperation and transparency between all parties involved as well as by recognising the need to maintain a sustainable and reliable procedure for resolution of disputes in a timely and resource effective manner. However, due respect should be given to the confidentiality of government to government communication. All parties are committed to seeking the avoidance of double taxation as defined in Article 4 of the Arbitration Convention and abide by the letter and the spirit of the Arbitration Convention. This includes that Member States of the European Union provide their competent authorities with sufficient resources in terms of personnel, funding, training etc. to carry out their mandate, i.e. resolving cases of double taxation in accordance with the Arbitration Convention.

SCOPE OF THE ARBITRATION CONVENTION (Chapter I, Articles 1 and 2 AC)

1. Cases covered

- (a) An action which results or is likely to result in double taxation within the meaning of Article 1 of the Arbitration Convention does not require that the transfer pricing adjustment within the meaning of Article 4 of the Convention leads to an actual payment of tax. Therefore cases where the entity subject to the adjustment within the meaning of Article 4 has losses carried forward against which an upward adjustment could be offset or cases where because of group relief no actual tax payment is due and similar situations, are within the scope of the Arbitration Convention.
- (b) Cases submitted for resolution under the Arbitration Convention generally regard earlier years. This means that the entities or enterprises involved may have merged, restructured, entered into liquidation or changed otherwise after the years in which double taxation has arisen. This in and of itself should not disallow the case to be handled under the Arbitration Convention, as relief of double taxation is generally still important.¹⁹

2. Application of the Arbitration Convention dependent on the outcome of a mutual

¹⁹ Reservation: In case of termination without legal successor (liquidation), in Hungary there is no possibility after the termination to modify the tax liability. The fact of ceasing without a legal successor excludes the enforcement of any kind of possibility for correction based on double taxation.

agreement procedure under a DTC

If access to the Arbitration Convention or the treatment of cases under the Arbitration Convention depends directly on the result of a mutual agreement procedure under an applicable Double Taxation Convention, care should be taken to ensure that the deadline under Article 6(1) of the Arbitration Convention does not expire. The enterprise should file separate requests for a mutual agreement procedure under the Arbitration Convention and a mutual agreement procedure available under the applicable Double Taxation Convention. The requests may be combined in one letter. The two-year period referred to in Article 7 (1) AC will not start before the issue addressed under the Double Taxation Convention is solved.

3. EU triangular transfer pricing cases

- (a) For the purpose of this Code of Conduct, a EU triangular case is a case where, in the first stage of the Arbitration Convention procedure, two EU competent authorities cannot fully resolve any double taxation arising in a transfer pricing case when applying the arm's length principle because an associated enterprise situated in (an)other Member State(s) and identified by both EU competent authorities (evidence based on a comparability analysis including a functional analysis and other related factual elements) had a significant influence in contributing to a non-arm's length result in a chain of relevant transactions or commercial/financial relations and is recognised as such by the taxpayer suffering the double taxation and having requested the application of the provisions of the Arbitration Convention.
- (b) The scope of the Arbitration Convention includes all EU transactions involved in triangular cases among Member States.

4. Thin capitalisation²⁰

²⁰ Reservations: Bulgaria holds the view that profit adjustments arising from an adjustment to the price of a loan (i.e. the interest rate) fall within the scope of the Arbitration Convention. On the contrary, Bulgaria considers that the Arbitration Convention does not cover cases of profit adjustments based on adjustments to the amount of financing. In principle the grounds for such adjustments lay in the domestic legislation of Member States. The operation of varying national rules and the absence of an internationally recognized arm's length set of guidelines to be applied to a business' capital structure, to a great extent challenge the arm's length character of profit adjustments based on adjustments to the amount of a loan.

The Czech Republic shall not apply the mutual agreement procedure under the Arbitration Convention in case that is a subject to the anti-abuse rules under the domestic law.

Greece considers that adjustments which fall within the scope of Arbitration Convention are those of the interest rate of a loan. Adjustments concerning the amount of a loan and the deductibility of accrued interest related to a loan should not apply to Arbitration Convention, due to domestic legislation limitations in force.

Hungary considers only those cases fall within the scope of the AC where double taxation is due to the adjustment of the interest rate of the loan and the adjustment is based on the ALP.

Italy considers that the Arbitration Convention may be invoked in case of double taxation due to a price adjustment of a financial transaction not in accordance with the arm's length principle. Conversely, it cannot be invoked to solve double taxation arising from adjustments to the amount of loans, or double taxation occurred because of the differences in domestic rules on the allowed amount of financing or on interest deductibility.

Latvia's understanding is that the Arbitration Convention cannot be invoked in case of double taxation arising as a result of application of general national legislation on adjustments of the amount of a loan or on deductibility

The Arbitration Convention makes clear reference to profits arising from commercial and financial relations but does not seek to differentiate between these specific profit types. Therefore, profit adjustments arising from financial relations, including a loan and its terms, and based on the arm's length principle are to be considered within the scope of the Arbitration Convention.

5. Denial of access

Member States should consider providing domestic legal remedies for determining whether the denial of access to the Arbitration Convention by their administrative bodies is justified.²¹

DISPUTE RESOLUTION PROCEDURE (Chapter II, Articles 3 to 14 AC)

6. Principles applied (Article 4 AC)

- (a) The arm's length principle will be applied, as advocated by the OECD, without regard to the immediate tax consequences for any particular Member State.
- (b) Article 4(2) of the Arbitration Convention should be interpreted in the spirit of the most recent version of Article 7 of the OECD Model Tax Convention on Income and on Capital and the relevant Commentary. This will not apply in cases where the bilateral Double Taxation Convention between the Member States involved has a different wording. In cases where Member States have concluded bilateral Double Taxation Conventions, Article 4(2) should have the same meaning as the relevant Article on attributing profits to permanent establishments in the applicable Double

of interest payments, that is not based on the arm's length principle provided for in Article 4 of the Arbitration Convention.

Therefore, Latvia considers that only adjustments of interest deductions performed under national legislation based on the arm's length principle are within the scope of the Arbitration Convention.

Poland considers that procedure stipulated by Arbitration Convention may be applicable only in the case of interest adjustments. While adjustments concerning amount of a loan should not be covered by the Convention. In our opinion it is quite impossible to define how capital structure should look in practice in order to be in line with arm's length principle.

Portugal considers that the Arbitration Convention cannot be invoked to resolve cases of double taxation caused by adjustments to profits arising either from corrections to the amount of a loan contracted between associated companies or to interest payments based on domestic anti-abuse measures. Nevertheless, Portugal admits to review its position once consensus is reached at international level, namely through guidance from the OECD, on the application of the arm's length principle to the amount of debts (involving thin capitalisation situations) between associated companies.

Slovakia is of the opinion that an adjustment of the interest rate which is based on national legislation based on the arm's length principle should fall within the scope of the Arbitration Convention but the adjustments to profits arising as a result of the application of anti-abuse rules under domestic legislation should fall outside the scope of the Arbitration Convention.

²¹ Reservations: Italy expresses its disagreement with this possibility of challenging the position of the Competent Authority, as this is not provided for in the Italian legislation.

According to the Swedish national legislation it is not possible to appeal against denial of access to the Arbitration Convention.

Poland considers MAP a non-formalized procedure to which Polish tax procedural legislation does not apply and therefore no possibility exists to provide legal remedies for determining whether the denial of access to the Arbitration Convention by its administrative bodies is justified.

Taxation Convention, taking into account the OECD commentary on the provisions included in the Double Taxation Convention. In cases where there is no bilateral Double Taxation Convention between the Member States involved, the Member States should seek to reach an agreement on a common approach in the first phase of the procedure under the Arbitration Convention. If the Member States fail to reach an agreement, the interpretation of Article 7 in the Commentary of the July 2008 version of the OECD Model Tax Convention should apply.²²

7. Mutual Agreement Procedures under the Arbitration Convention (Articles 6 and 7 AC)

7.1 General Provisions

- (a) A tax administration making an adjustment is encouraged to inform the enterprise in a timely manner of its rights under the Arbitration Convention, including about any time limits in the Convention for initiating a mutual agreement procedure. The onus for making a timely request in order to preserve access to the mutual agreement procedure rests with the enterprise and enterprises should take all reasonable steps to ensure that time limits do not expire.
- (b) Cases will be resolved as quickly as possible having regard to the complexity of the issues in question.
- (c) Although competent authorities and audit (function) may belong to the same tax administration, competent authorities should maintain a degree of autonomy from the audit function of the tax administration in order to ensure the independence of any subsequent review of a case by the competent authority. The guiding principle should be that the competent authority's function is to ensure a fair and appropriate application of the Arbitration Convention, not to seek to uphold all adjustments proposed by the tax authorities of its Member State.
- (d) Enterprises and tax administrations should not include waiver of access to a mutual agreement procedure in audit settlements and unilateral Advance Pricing Agreements, as it would be inappropriate for two parties (the enterprise and one tax administration) to exclude a third party (the other tax administration) from the final resolution of a file in which they had an interest.
- (e) Any appropriate means for reaching a mutual agreement as expeditiously as possible, including face-to-face meetings, will be considered. Where appropriate, the enterprise will be invited to make a presentation to its competent authority.
- (f) Taking into account the provisions of this Code of Conduct, a mutual agreement should

²² Reservations:

Denmark cannot accept the last sentence of point 6 b): "If the Member States fail to reach an agreement, the interpretation of Article 7 in the Commentary of the July 2008 version of the OECD Model Tax Convention should apply".

France cannot subscribe to the last sentence of point 6b).

be reached within two years of the date on which the case was first submitted to one of the competent authorities in accordance with point 7.6(b) of this Code of Conduct. However, it is recognised that in some situations (e.g. imminent resolution of the case or particularly complex transactions, or triangular cases), it may be appropriate to apply Article 7(4) of the Arbitration Convention (providing for time limits to be extended) to agree a short extension.

- (g) The mutual agreement procedure should not impose any inappropriate or excessive compliance costs on the person requesting it, or on any other person involved in the case.
- h) The enterprise should provide all necessary information available at the time of the request to initiate the mutual agreement procedure. Requests for additional information and responses to those requests should be complete, well-targeted and submitted without unnecessary delay responses should be sent to both competent authorities. Failure to cooperate during any part of the procedure of the Arbitration Convention may have direct consequences on the length of time needed to obtain relief and whether such relief can ultimately be provided.

7.2 The starting point of the three-year period (deadline for submitting the request according to Article 6(1) of the Arbitration Convention)

The date of the 'first tax assessment notice or equivalent which results or is likely to result in double taxation within the meaning of Article 1 of the Arbitration Convention, e.g. due to a transfer pricing adjustment'²³, is considered as the starting point for the three-year period. A request is considered as presented for the purposes of the three-year period under the second sentence of Article 6 (1) AC when it contains the information listed in (point 7.6 (a) (i) – (vii) CoC.

As far as transfer pricing cases are concerned, Member States are recommended to apply this definition also to the determination of the three-year period as provided for in Article 25.1 of the OECD Model Tax Convention on Income and on Capital and implemented in the double taxation treaties between Member States.

7.3 Practical functioning and transparency

- (a) In order to minimise costs and delays caused by translation, the mutual agreement procedure, in particular the exchange of position papers, should be conducted in a common working language, or in a manner having the same effect, if the competent authorities can reach agreement on a bilateral (or multilateral) basis.
- (b) The enterprise requesting the mutual agreement procedure will be kept informed by the competent authority to which it made the request of all significant developments that

²³ Reservation: The tax authority Member from Italy considers 'the date of the first tax assessment notice or equivalent reflecting a transfer pricing adjustment which results or is likely to result in double taxation within the meaning of Article 1' as the starting point of the three-year period, since the application of the existing Arbitration Convention should be limited to those cases where there is a transfer pricing 'adjustment'.

affect it during the course of the procedure.

- (c) The confidentiality of information relating to any person that is protected under a bilateral tax convention or under the law of a Member State will be ensured.
- (d) Enterprises should submit a copy of their request for a mutual agreement procedure under the Arbitration Convention to the other competent authority involved at the same time and with the same set of information as to the competent authority to which the request is addressed in accordance with Article 6 (1) of the Arbitration Convention. Where appropriate and allowed, this might be done through electronic means. In cases where the request is not made in a common working language, the enterprise should provide a translation of the request into a common working language. The fact that a copy of the request was submitted by the enterprise does not replace the obligation of the competent authority to inform the other competent authority about receiving the request under point 7.3 (e) nor should it be understood as limiting a competent authority's efforts to come to a satisfactory solution itself within the meaning of Article 6 (2) of the Arbitration Convention.
- (e) The competent authority will acknowledge receipt of a taxpayer's request to initiate a mutual agreement procedure within one month from the receipt of the request and at the same time inform the competent authority(ies) of the other Member State(s) involved in the case attaching a copy of the taxpayer's request. The competent authorities should reach a mutual understanding on whether they consider the minimum information as submitted. A competent authority should inform the other competent authority(ies) when access to the Arbitration Convention is denied and provide them with the reasons for the denial. The competent authorities involved should exchange their views, so as to try, where possible, to reach a common position on whether the denial of access to the Arbitration Convention is justified.
- (f) If the competent authority believes that the enterprise has not submitted the minimum information necessary for the initiation of a mutual agreement procedure as stated under point 7.6(a), it will invite the enterprise, within two months upon receipt of the request, to provide it with the specific additional information it needs.
- (g) Member States undertake that the competent authority will respond to the enterprise making the request in one of the following forms:
 - (i) if the competent authority does not believe that profits of the enterprise are included, or are likely to be included, in the profits of an enterprise of another Member State, it will inform the enterprise of its doubts and invite it to make any further comments;
 - (ii) if the request appears to the competent authority to be well-founded and it can itself arrive at a satisfactory solution, it will inform the enterprise accordingly and make as quickly as possible such adjustments or allow such reliefs as are justified;
 - (iii) if the request appears to the competent authority to be well-founded but it is not itself able to arrive at a satisfactory solution, it will inform the enterprise that it will endeavour to resolve the case by mutual agreement with the competent authority of any other Member State concerned.
- (h) If a competent authority considers a case to be well-founded, it should initiate a mutual

agreement procedure by informing the competent authority(ies) of the other Member State(s) of its decision and attach a copy of the information as specified under point 7.6(a) of this Code of Conduct. At the same time it will inform the person invoking the Arbitration Convention that it has initiated the mutual agreement procedure. The competent authority initiating the mutual agreement procedure will also inform — on the basis of information available to it — the competent authority(ies) of the other Member State(s) and the person making the request whether the case was presented within the time limits provided for in Article 6(1) of the Arbitration Convention and of the starting point for the two-year period of Article 7(1) of the Arbitration Convention.

- (i) Where a new request by an enterprise for a mutual agreement procedure is linked to issues which are already covered by an ongoing mutual agreement procedure with the same enterprise, competent authorities should, where appropriate, consider treating the new request together with the ongoing mutual agreement procedure. Where a request for a mutual agreement procedure is linked to issues which have already been covered in another mutual agreement procedure regarding the same enterprise, competent authorities should typically consider applying the outcome in the earlier mutual agreement procedure to the new request and where appropriate, to apply that outcome.

7.4 Exchange of position papers

- (a) Member States undertake that when a mutual agreement procedure has been initiated, the competent authority of the country in which a tax assessment, i.e. a final decision of the tax administration on the income, or equivalent has been made, or is intended to be made, which contains an adjustment that results, or is likely to result, in double taxation within the meaning of Article 1 of the Arbitration Convention, will send a position paper to the competent authority(ies) of the other Member State(s) involved in the case. The position paper will contain the information relevant for understanding the case under consideration. Depending on the facts and circumstances of the case the position paper may set out e.g.:

- (i) General information:

- legal name, address and taxpayer identification number of the person requesting assistance, its related persons in the other country, if applicable, and the basis for determining the association;
- the contact details of the competent authority official in charge of the case
- broad overview of the issue, transactions, business, and basis for the adjustment
- the tax years affected
- amount of income and tax adjusted in each tax year, if applicable
- summary of relevant information from the original tax return

- (ii) the case made by the person making the request:

- description of the exact nature of the issue or adjustment
 - if relevant, calculations with supporting data (these may include financial and economic data and reports relied upon, explanatory narratives as well as taxpayer documents and records where relevant and appropriate).
- (iii) the competent authority's view of the merits of the case, e.g. why it believes that double taxation has occurred or is likely to occur;
- (iv) how the competent authority suggests that case might be resolved with a view to the elimination of double taxation together with a full explanation of the proposal.
- (b) The position paper will contain a full justification of the assessment or adjustment and will be accompanied by basic documentation supporting the competent authority's position and a list of all other documents used for the adjustment, e.g.
- outline of comparable transactions and comparability adjustments;
 - description of the methodology employed for the adjustment; and
 - an explanation of the appropriateness of the transfer pricing methodology employed for the adjustment (i.e. an explanation why it believes the adjustment achieves an arm's length outcome; identification of tested party, if applicable; industry and functional analysis, if a relevant study is not already included elsewhere in the taxpayer's submission).
- (c) The position paper will be sent to the competent authority(ies) of the other Member State(s) involved in the case as quickly as possible taking account of the complexity of the particular case and no later than four months from the latest of the following dates:
- (i) the date of the tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent;
- (ii) the date on which the competent authority receives the request and the minimum information as stated under point 7.6(a).
- (d) Member States undertake that, where a competent authority of a country in which no tax assessment or equivalent has been made, or is not intended to be made, which results, or is likely to result, in double taxation within the meaning of Article 1 of the Arbitration Convention, e.g. due to a transfer pricing adjustment, receives a position paper from another competent authority, it will respond as quickly as possible taking account of the complexity of the particular case and no later than six months after receipt of the position paper
- (e) The response should take one of the following two forms:
- (i) if the competent authority believes that double taxation has occurred, or is likely to occur, and agrees with the remedy proposed in the position paper, it will inform the other competent authority(ies) accordingly and make such adjustments or allow such relief as quickly as possible;

- (ii) if the competent authority does not believe that double taxation has occurred, or is likely to occur, or does not agree with the remedy proposed in the position paper, it will send a responding position paper to the other competent authority(ies) setting out its reasons and proposing an indicative time scale for dealing with the case taking into account its complexity. To enable the competent authorities to identify the areas of disagreement and to understand the position of the responding competent authority, a rebuttal or response paper could include e.g.:
- indication of the areas or issues where the competent authorities are in agreement or disagreement;
 - requests for additional information and explanations necessary to clarify particular issues;
 - presentation of other or additional information considered pertinent to the case, but not raised in the initial position paper; and
 - submission of proposals or views to resolve the issue.

The proposal will include, whenever appropriate, a date for a face-to-face meeting, which should take place no later than 18 months from the latest of the following dates:

- (aa) the date of the tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent;
- (bb) the date on which the competent authority receives the request and the minimum information as stated under point 7.6(a).
- (f) Member States will further undertake any appropriate steps to speed up all procedures wherever possible. In this respect, Member States should envisage to organise regularly, and at least once a year, face-to-face-meetings between their competent authorities to discuss pending mutual agreement procedures (provided that the number of cases justifies such regular meetings).

7.5 EU triangular transfer pricing cases

- (a) As soon as the competent authorities of the Member States have agreed that the case under discussion is to be considered a EU triangular case, they should immediately invite the other EU competent authority(ies) to take part in the proceedings and discussions as (an) observer(s) or as (an) active stakeholder(s) and decide together which is their favoured approach. Accordingly, all information should be shared with the other EU competent authority(ies) through for example exchanges of information. The other competent authority(ies) should be invited to acknowledge the actual or possible involvement of 'their' taxpayer(s).
- (b) One of the following approaches may be adopted by the competent authorities involved to resolve double taxation arising from EU triangular cases under the Arbitration Convention:
- (i) the competent authorities can decide to take a multilateral approach (immediate and full participation of all the competent authorities concerned); or

- (ii) the competent authorities can decide to start a bilateral procedure, whereby the two parties to the bilateral procedure are the competent authorities that identified (based on a comparability analysis including a functional analysis and other related factual elements) the associated enterprise situated in another Member State that had a significant influence in contributing to a non-arm's length result in the chain of relevant transactions or commercial/financial relations, and should invite the other EU competent authority(ies) to participate as (an) observer(s) in the mutual agreement procedure discussions; or
- (iii) the competent authorities can decide to start more than one bilateral procedure in parallel and should invite the other EU competent authority(ies) to participate as (an) observer(s) in the respective mutual agreement procedure discussions.

Member States are recommended to apply a multilateral procedure to resolve such double taxation cases. However this should always be agreed by all the competent authorities, based on the specific facts and circumstances of the case. If a multilateral approach is not possible and a two or more parallel bilateral procedures are started, all relevant competent authorities should be involved in the first stage of the Arbitration Convention procedure either as Contracting States in the initial Arbitration Convention application or as observers.

- (c) The status of observer may change to that of stakeholder depending on the development of the discussions and evidence presented. If the other competent authority(ies) want(s) to participate in the second stage (arbitration), it (they) has (have) to become (a) stakeholder(s).

The fact that the other EU competent authority(ies) remain(s) throughout as (a) party(ies) to the discussions as (an) observer(s) only has no consequences for the application of the provisions of the Arbitration Convention (e.g. timing issues and procedural issues).

Participation as (an) observer(s) does not bind the other competent authority(ies) to the final outcome of the Arbitration Convention procedure.

In the procedure, any exchange of information must comply with the normal legal and administrative requirements and procedures.

- (d) The taxpayer(s) should, as soon as possible, inform the tax administration(s) involved that (an)other party(ies), in (an)other Member State(s), could be involved in the case. That notification should be followed in a timely manner by the presentation of all relevant facts and supporting documentation. Such an approach will not only lead to quicker resolution but also guard against the failure to resolve double taxation issues due to differing procedural deadlines in the Member States.

7.6 The starting point of the two-year period (Article 7(1) of the Arbitration Convention)

- (a) For the purpose of Article 7(1) of the Arbitration Convention, a case will be regarded as having been submitted according to Article 6(1) when the taxpayer provides the following:

- (i) identification (such as name, address, tax identification number) of the enterprise of the Member State that presents its request and of the other parties to the relevant transactions;
 - (ii) details of the relevant facts and circumstances of the case (including details of the relations between the enterprise and the other parties to the relevant transactions);
 - (iii) identification of the tax periods concerned;
 - (iv) copies of the tax assessment notices, tax audit report or equivalent leading to the alleged double taxation;
 - (v) details of any appeals and litigation procedures initiated by the enterprise or the other parties to the relevant transactions and any court decisions concerning the case;
 - (vi) an explanation by the enterprise of why it considers that the principles set out in Article 4 of the Arbitration Convention have not been observed;
 - (vii) an undertaking that the enterprise shall respond as completely and quickly as possible to all reasonable and appropriate requests made by a competent authority and have documentation at the disposal of the competent authorities; and
 - (viii) any specific additional information requested by the competent authority within two months upon receipt of the taxpayer's request. Requests for additional information should be well-targeted and responses to those requests should be complete and submitted without unnecessary delay to both competent authorities. A competent authority should inform the other competent authority(ies) about additional information requested where appropriate.
- (b) The two-year period starts on the latest of the following dates:
- (i) the date of the tax assessment notice, i.e. a final decision of the tax administration on the additional income, or equivalent;
 - (ii) the date on which the competent authority receives the request and the minimum information as stated under point 7.6 (a).

7.7 Domestic remedies

If the terms and conditions of an agreement reached in a mutual agreement procedure are not satisfactory to the enterprise, the enterprise may withdraw its request for a mutual agreement procedure under the Arbitration Convention.

When at the time when an agreement is reached under the procedure of Article 6(2) of the Arbitration Convention, domestic remedies are still pending, the implementation of this agreement should be subject to its acceptance by the enterprise and the enterprise's withdrawal from domestic remedies such as appeals concerning the issues settled in a mutual agreement procedure under the Arbitration Convention.

8. Serious Penalties (Article 8 AC)

As Article 8(1) provides for flexibility in refusing to give access to the Arbitration Convention due to the imposition of a serious penalty, and considering the practical experience acquired since 1995, Member States should deny access to the Arbitration Convention when serious penalties are applied only in exceptional cases. Exceptional

cases include tax fraud, wilful default and gross negligence.²⁴

9. Proceedings during the second phase of the Arbitration Convention (Articles 9-12 AC)

9.1 List of independent persons

- (a) Member States commit themselves to inform without any further delay the Secretary-General of the Council of the names of the five independent persons of standing, eligible to become a member of the advisory commission as referred to in Article 7(1) of the Arbitration Convention and inform, under the same conditions, of any alteration of the list.
- (b) When transmitting the names of their independent persons of standing to the Secretary-General of the Council, Member States will join a curriculum vitae of those persons, which should, among other things, describe their legal, tax and especially transfer pricing experience.
- (c) Member States may also indicate on their list those independent persons of standing who fulfil the requirements to be elected as Chairman.
- (d) The Secretary General of the Council will address every year a request to Member States to confirm the names of their independent persons of standing or give the names of their replacements.
- (e) The aggregate list of all independent persons of standing will be published on the Council's website.
- (f) Independent persons of standing do not have to be nationals of or resident in the nominating State, but do have to be nationals of a Member State and resident within the territory to which the Arbitration Convention applies.
- (g) Competent authorities are recommended to draw up an agreed declaration of acceptance and a statement of independence for the particular case, to be signed by the selected independent persons of standing.

9.2 Establishment of the advisory commission

- (a) Unless otherwise agreed between the Member States concerned, the Member State that issued the first tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent which results, or is likely to result, in double taxation within the meaning of Article 1 of the Arbitration Convention, takes the initiative for

²⁴ Reservations:

France will apply the recommendation provided in point 8 considering that it includes in particular the penalties mentioned in the declaration made when signing the Arbitration Convention.

Referring to its individual declaration on Article 8 on „serious penalty”, Hungary would like to reserve its right to refuse access to the Arbitration Convention not only in case of criminal penalties established in relation to criminal tax offenses but also in case of imposing tax penalties in the lack of establishing criminal liability.

the establishment of the advisory commission and arranges for its meetings, in agreement with the other Member State(s).

- (b) Competent authorities should establish the advisory commission no later than six months following expiry of the period referred to in Article 7 of the Arbitration Convention. Where one competent authority does not do this, another competent authority involved is entitled to take the initiative.
- (d) The advisory commission will be assisted by a secretariat for which the facilities will be provided by the Member State that initiated the establishment of the advisory commission unless otherwise agreed by the Member States concerned. For reasons of independence, this secretariat will function under the supervision of the Chairman of the advisory commission. Members of the secretariat will be bound by the secrecy provisions as stated in Article 9(6) of the Arbitration Convention.
- (e) The place where the advisory commission meets and the place where its opinion is to be delivered may be determined in advance by the competent authorities of the Member States concerned.
- (f) Member States will provide the advisory commission before its first meeting, with all relevant documentation and information and in particular all documents, reports, correspondence and conclusions used during the mutual agreement procedure. To assist the advisory commission in completing its work in a timely and efficient manner, the competent authorities will use the time period needed to establish the advisory commission to collect and prepare all necessary information, so that it is already available at the outset of the procedure.

9.3 Functioning of the advisory commission

- (a) A case is considered to be referred to the advisory commission on the date when the Chairman confirms that its members have received all relevant documentation and information as specified in point 9.2(f).
- (b) The proceedings of the advisory commission will be conducted in the official language or languages of the Member States involved, unless the competent authorities decide otherwise by mutual agreement, taking into account the wishes of the advisory commission.
- (c) The advisory commission may request from the party from which a statement or document emanates to arrange for a translation into the language or languages in which the proceedings are conducted.
- (d) Whilst respecting Article 10 of the Arbitration Convention, the advisory commission may request Member States and in particular the Member State that issued the first tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent, which resulted, or may result, in double taxation within the meaning of Article 1 of the Arbitration Convention, to appear before the advisory commission. At the outset of the arbitration procedure each of the enterprises involved should be informed by their respective competent authorities of their right to make a statement before the advisory commission.

- (e) The costs of the advisory commission procedure, which will be shared equally by the Member States concerned, will be the administrative costs of the advisory commission and the fees and expenses of the independent persons of standing.
- (f) Unless the competent authorities of the Member States concerned agree otherwise:
 - (i) the reimbursement of the expenses of the independent persons of standing will be limited to the reimbursement usual for high ranking civil servants of the Member State which has taken the initiative to establish the advisory commission;
 - (ii) the fees of the independent persons of standing will be fixed at EUR 1 000 per person per meeting day of the advisory commission, and the Chairman will receive a fee higher by 10 % than that of the other independent persons of standing.
- (g) Actual payment of the costs of the advisory commission procedure will be made by the Member State which has taken the initiative to establish the advisory commission, unless the competent authorities of the Member States concerned decide otherwise.

9.4 Opinion of the advisory commission

Member States would expect the opinion to contain:

- (a) the names of the members of the advisory commission;
- (b) the request; the request contains:
 - (i) the names and addresses of the enterprises involved;
 - (ii) the competent authorities involved;
 - (iii) a description of the facts and circumstances of the dispute;
 - (iv) a clear statement of what is claimed;
- (c) a short summary of the proceedings;
- (d) the arguments and methods on which the decision in the opinion is based;
- (e) the opinion;
- (f) the place where the opinion is delivered;
- (g) the date on which the opinion is delivered;
- (h) the signatures of the members of the advisory commission.

The decision of the competent authorities and the opinion of the advisory commission will be communicated as follows:

- (i) Once the decision has been taken, the competent authority to which the case was presented will send a copy of the decision of the competent authorities and the opinion of the advisory commission to each of the enterprises involved.
- (ii) The competent authorities of the Member States can agree that the decision and

the opinion may be published in full. They can also agree to publish the decision and the opinion without mentioning the names of the enterprises involved and with deletion of any further details that might disclose the identity of the enterprises involved. In both cases, the enterprises' consent is required and prior to any publication the enterprises involved must have communicated in writing to the competent authority to which the case was presented that they do not have objections to publication of the decision and the opinion.

- (iii) The opinion of the advisory commission will be drafted in three (or more in the case of triangular cases) original copies, one to be sent to each competent authority of the Member States involved and one to be transmitted to the Secretariat-General of the Council for archiving. If there is agreement on the publication of the opinion, the latter will be rendered public in the original language(s) on the website of the Commission.

10. Tax collection and interest charges during cross-border dispute resolution procedures

- (a) Member States are recommended to take all necessary measures to ensure that the suspension of tax collection during cross-border dispute resolution procedures under the Arbitration Convention can be obtained by enterprises engaged in such procedures under the same conditions as those engaged in a domestic appeals or litigation procedure although these measures may imply legislative changes in some Member States. It would be appropriate for Member States to extend these measures to the cross-border dispute resolution procedures under double taxation treaties between Member States.
- (b) Considering that, during mutual agreement procedure negotiations, a taxpayer should not be adversely affected by the existence of different approaches to interest charges and refunds during the time it takes to complete the mutual agreement procedure, Member States are recommended to apply one of the following approaches:
 - (i) tax to be released for collection and repaid without attracting any interest; or
 - (ii) tax to be released for collection and repaid with interest; or
 - (iii) each case to be dealt with on its merits in terms of charging or repaying interest (possibly during the mutual agreement procedure).

When, nevertheless, asymmetry results, Member States should seek to eliminate any resulting asymmetry in the mutual agreement procedure where possible. Enterprises are advised to explicitly request that the interest issue is addressed in the mutual agreement procedure.²⁵

²⁵ Reservation: In Italy the amount of interests to be reimbursed or to be collected must be calculated in accordance with domestic legislation, which cannot be modified by an existing mutual agreement procedure.

FINAL PROVISIONS (Chapter III, Articles 15 to 22 AC)

11. Double taxation treaties between Member States (Article 15 AC)

As far as transfer pricing cases are concerned, Member States are recommended to apply the provisions of points 1, 2 and 3 also to mutual agreement procedures initiated in accordance with Article 25(1) of the OECD Model Convention on Income and on Capital, implemented in the double taxation treaties between Member States.

12. Admissibility of a case

On the basis of Article 18 of the Arbitration Convention, Member States are recommended to consider that a case is covered by the Arbitration Convention when the request is presented in due time after the date of entry into force of accession by new Member States to the Arbitration Convention, even if the adjustment applies to earlier fiscal years.

13. Monitoring

In order to ensure the even and effective application of this Code of Conduct, Member States are invited to report to the Commission on its practical functioning every two years. On the basis of these reports, the Commission intends to report to the Council and may propose a review of the provisions of this Code of Conduct.

ANNEX 2

The starting point of the three-year period (deadline for submitting the request according to Article 6 (1) of the Arbitration Convention)

Member State	Implementation in national legislation ²⁶	Member States' unofficial translation in EN ²⁷
AT	Die <u>Zustellung</u> des ersten Steuerbescheides [<i>der zu einer Doppelbesteuerung, z.B. aufgrund einer Verrechnungspreiskorrektur, führt</i>]	The date on which the taxpayer <u>receives</u> the first tax assessment notice (<i>Steuerbescheid</i>) or equivalent [<i>that results in double taxation, e.g. due to a transfer pricing adjustment</i>]
BE	La date d' <u>envoi</u> de l'avertissement-extrait de rôle comportant l'imposition ou le supplément d'imposition /en NL. : de <u>verzendingsdatum</u> van het aanslagbiljet dat de aanslag of de aanvullende aanslag omvat	The date on which the notice of assessment (<i>Avertissement-extrait de rôle - Aanslagbiljet</i>) is <u>sent</u> containing the assessment or the supplementary assessment
BG	Дата на <u>връчване</u> на акта, с който се определят задължения за данъци, произтичащи от корекция на трансферните цени.	The date of service (receipt) of the tax assessment notice (<i>акта</i>) by which tax liabilities as a result of transfer pricing adjustment have been determined.
CY	Η ημερομηνία <u>επίδοσης</u> της ειδοποίησης επιβολής φορολογίας [<i>που αντανακλά τις τροποποιήσεις για τις τιμές μεταβίβασης</i>].	The date of <u>service</u> (<i>επίδοση</i>) of the tax assessment notice (<i>ειδοποίηση επιβολής φορολογίας</i>) [<i>that reflects the transfer pricing adjustment</i>].
CZ	<u>Doručení</u> prvního platebního výměru nebo jiného rozhodnutí, které vede ke dvojímu zdanění.	The date on which the taxpayer <u>receives</u> the first tax assessment (<i>platební výměr</i>) or equivalent that results in double taxation
DE	Die <u>Bekanntgabe</u> des ersten Bescheides, der zu einer Doppelbesteuerung führt	The date on which the taxpayer <u>receives</u> the first tax assessment notice (<i>Bescheid</i>) or equivalent that results in double taxation
DK	I Danmark vil den første endelige underretning fra skattemyndighederne om armslængde reguleringen blive givet ved <u>modtagelsen</u> af kendelsen, hvorfor	The date on which the taxpayer <u>receives</u> the final assessment (<i>skatteansættelsen (kendelse)</i>) from the tax authorities

²⁶ In the official language of the Member States. In case of doubt, the original language will prevail.

²⁷ Additional explanatory notes and exact transcription in the language of the Member State concerned of the « act » resulting in double taxation are provided in italic characters.

	<p>treårsfristen i henhold til Voldgiftskonventionens art. 6.1 begynder at løbe fra dette tidspunkt.</p> <p>[Såfremt skattemyndighederne agter at foretage en skatteansættelse på et andet grundlag end det, der er selvangivet, skal den skattepligtige underrettes skriftlig herom. Det skal samtidig underrettes om, at skatteyder har en frist på mindst 15 dage regnet fra skrivelsens datering, til at fremkomme med en udtalelse imod den foreslåede ændring af skatteansættelsen, jf. Skatteforvaltningslovens § 20. Har den skattepligtige udtalt sig inden fristens udløb, skal skattemyndighederne give skriftlig underretning om skatteansættelsen (kendelse).]</p>	<p>[If the tax authorities intend to make an assessment not in accordance with a tax return, a notice specifying the amendment and the reason for it must be sent to the taxpayer. The taxpayer must be given a period of at least 15 days from the date of the notice to submit its comments on the amendment. Hereafter the tax authorities send the final assessment to the taxpayer.]</p>
EE	<p>Arvates haldusakti <u>teatavaks</u> tegemise või <u>kättetoimetamise</u> päevast.</p>	<p>According to the Estonian domestic law, the date of <u>notification</u> of or <u>delivery</u> of the administrative act (<i>arvates haldusakti</i>) is decisive in case of similar procedure for appeals.</p> <p>[Thus, the starting point of the 3 year period in the meaning of the article 6(1) AC would be the date on which the taxpayer <u>receives</u> the tax assessment notice or equivalent.]</p>
FI	<p>Päivä, jona verovelvollinen on <u>saanut</u> tiedon ensimmäisestä verotuspäätöksestä tai vastaavasta toimenpiteestä, jolla siirtohinnoittelua on oikaistu.</p> <p>på svenska: Dagen då den skattskyldige <u>fått kännedom</u> om det första skattebeslutet eller den motsvarande åtgärden, genom vilken den interna prissättningen har korrigerats.</p>	<p>The date on which the taxpayer <u>receives</u> the first tax assessment notice (<i>verotuspäätöksestä/ skattebeslutet</i>) or equivalent decision resulting in a transfer pricing adjustment.</p>
FR	<p>La date de <u>réception</u> de la proposition de rectification en cas de procédure contradictoire.</p> <p>La date de <u>réception</u> de la notification des bases ou éléments d'imposition en cas de procédure d'office.</p>	<p>The date of <u>receipt</u> of the notification of adjustments (<i>proposition de rectification</i>) or the notification of basis of elements of assessments (<i>notification des bases ou éléments d'imposition</i>) in case of estimated assessment</p>

EL	από την ημερομηνία <u>επίδοσης</u> της πράξης προσδιορισμού φόρου	From the date of <u>service</u> (receipt) of the tax assessment notice (<u>πράξης προσδιορισμού φόρου</u>)
ES	La fecha de la notificación del acto de liquidación	The date of the tax assessment notice (<i>notificación del acto de liquidación</i>) or equivalent [<i>that reflects the transfer pricing adjustment</i>]
HR	Dan <u>primitka</u> poreznog akta koji za posljedicu može imati dvostruko oporezivanje	The date on which the taxpayer <u>receives</u> the tax assessment notice (poreznog akta) or equivalent that results in double taxation
HU	<i>Az adózás rendjéről szóló 2003. évi XCII. törvény rendelkezéseiből következően a 2006. évi XXXVI. törvény 6. cikk (1) bekezdés második mondata alkalmazásában a három éves határidő azon a napon kezdődik, amelyen a vizsgált magyar adózó számára a magyar adóhatósági ellenőrzésére vonatkozó, a transzferár megállapítást tartalmazó adóhatósági határozat <u>kézbetésre</u> kerül.</i>	<p>The deadline for submitting the request according to Article 6 (1) of the AC starts on the date on which the Hungarian taxpayer officially <u>receives</u> the Hungarian tax authority's decision containing the transfer pricing assessment. The legal basis for this is in the Act XCII of 2003 on the Rules of Taxation.</p> <p>[In respect of Article 6 (1) of the AC, it should be noted that Hungary made a reservation on the Article 25 of OECD Model Tax Convention on Income and on Capital, Point No. 101. Hungary reserves its position on the last sentence of paragraph 1 as it could not agree to pursue a mutual agreement procedure in the case of a request that would be presented to its competent authority outside the prescription period provided for under its domestic legislation. According to Article 164 (11) of Act XCII of 2003 on the Rules of Taxation, unless otherwise provided for by the international agreement on double taxation, a mutual agreement procedure prescribed in the international agreement on double taxation shall be opened on condition that the request for opening the procedure or any notice based on which the procedure may be opened shall arrive from the competent authority of the other Member State to the competent Hungarian authority within the term of limitation of the right of tax assessment or tax refund. Moreover, the general provisions in the first sentence of Article 164(1) of Act XCII of 2003 on the Rules of Taxation states that the time limit of the right to establish taxes shall be 5 years calculated from the last day of the calendar year, in which the tax should have been declared or reported, or should have been paid in the absence of a tax return or declaration.</p> <p>The right to establish taxes in Hungary is limited in 5</p>

		years. In Hungarian: <i>Főszabályként Magyarországon az adó megállapításához való jog 5 éven túl nem érvényesíthető.</i>]
IE	The date on which the taxpayer <u>receives</u> the first notice of tax assessment notice or equivalent that results in double taxation.	
IT	<p>La data in cui il contribuente <u>riceve</u> l'avviso di accertamento che riflette la rettifica dei prezzi di trasferimento</p> <p>[Per “Avviso di accertamento” si intende l'atto scritto con il quale l'Amministrazione fiscale comunica al contribuente di aver accertato un reddito imponibile maggiore del reddito dichiarato oppure un reddito imponibile non dichiarato.]</p>	<p>The date on which the taxpayer <u>receives</u> the notice of assessment (<i>Avviso di accertamento</i>) that reflects the transfer pricing adjustment</p> <p>[«Avviso d'accertamento» means a formal written act through which the tax administration notifies the taxpayer to have assessed taxable income that resulted to be higher than the declared income or that was not declared at all.]</p> <p>La date d'<u>envoi</u> de l'avis d'évaluation de l'assiette (<i>Avviso di accertamento</i>) incorporant l'ajustement du prix de transfert</p> <p>[Par «avviso d'accertamento» on entend un acte écrit formel par lequel l'Administration fiscale notifie au contribuable d'avoir évalué un revenu imposable qui est plus grand que le revenu déclaré ou qui n'a pas été déclaré.]</p> <p><u>Zugangsdatum</u> des Bescheids über die Feststellung von Besteuerungsgrundlagen (<i>Avviso di accertamento</i>), mit dem die Verrechnungspreiskorrekturen durchgeführt werden</p> <p>[Unter „avviso d'accertamento“ versteht man ein formales schriftliches Dokument, mit dem die Finanzbehörde dem Steuerpflichtigen mitteilt, einen zu versteuernden Einkommensbetrag ermittelt zu haben, der höher als der erklärte Einkommensteuerbetrag ist oder der nicht erklärt worden war]</p>

<p>LU</p>	<p>« Bulletin », effet: le troisième jour ouvrable qui suit la <u>remise</u> de l'envoi à la poste</p> <p><i>[Les différents bulletins (bulletin d'impôt, bulletin de fixation, bulletin d'établissement séparé, bulletin provisoire, définitif, rectificatif.....) émis par l'administration des contributions du Luxembourg peuvent être désignés dans le contexte de la convention d'arbitrage par le mot « bulletin », en anglais « assessment », en allemand « Bescheid ».]</i></p>	<p>The date of the third working day following the <u>sending</u> of the assessment (“<i>Bulletin</i>” or “<i>Bescheid</i>”).</p> <p><i>[Nota: In general, the first document issued will be the document to prevail, only in very limited cases a second document can be issued. These are cases where the taxpayer formulated objections to a first assessment, leading to a reassessment, more favourable with regard to the first assessment but still resulting in a double taxation within the meaning of the Arbitration Convention.]</i></p> <p>Das Datum des dritten Arbeitstages nach <u>Absendung</u> des Bescheids</p>
<p>LT</p>	<p>Data, kurią kompetentinga institucija <u>pranešė</u> asmeniui apie priimtą sprendimą.</p> <p><i>[Pranešimo data suprantama kaip dokumento <u>įteikimo</u> data pagal Mokesčių administravimo įstatymo 164 straipsnį:</i></p> <p><i>1. Dokumentai mokesčių mokėtojui gali būti įteikiami tokiais būdais:</i></p> <p><i>1) tiesiogiai įteikiant;</i></p> <p><i>2) siunčiant registruotu laišku;</i></p> <p><i>3) telekomunikacijų galiniais įrenginiais;</i></p> <p><i>4) viešai paskelbiant]</i></p>	<p>There is no specific provision embedded in national legislation, thus, the general rules applied: it is a date, when competent authority <u>informed</u> the taxpayer of the decision adopted. In practice date of informing means the date when document is <u>delivered</u>, i. e. the starting point of the three-year period is the date on which the taxpayer <u>receives</u> (is recognised to have received) the final tax assessment note (<i>Sprendimas dėl patikrinimo akto tvirtinimo, i.e. Decision on the Approval of Audit Report</i>) from the tax authorities.</p> <p><i>[The date of receipt depends on the way of communication and is governed by general rules provided in 164 Article of Law on Tax Administration:</i></p> <p><i>Documents may be communicated to the taxpayer in the following manner:</i></p> <p><i>1) personally;</i></p> <p><i>2) by registered mail;</i></p> <p><i>3) by telecommunications terminal equipment;</i></p> <p><i>4) by publishing.]</i></p>
<p>LV</p>	<p>Diena, kad nodokļu maksātājam <u>paziņots</u> lēmums par audita rezultātiem</p>	<p>The date on which the taxpayer is <u>notified</u> on the tax assessment (<i>lēmums par audita rezultātiem</i>)</p>
<p>MT</p>	<p>Id-data tan-<u>notifika</u> ta' l-istima.</p>	<p>The date of the <u>service</u> (receipt) of the</p>

		notice of assessment (<i>l-istima</i>) [reflecting the transfer pricing adjustment]
NL	Navorderingsaanslag, of primaire aanslag [<i>indien de verrekenprijscorrectie hierin is begrepen</i>]	The date of the tax re-assessment notice (<i>Navorderingsaanslag</i>), or original assessment (<i>primaire aanslag</i>) [<i>if it includes the transfer pricing adjustment</i>]
PL	Bieg okresu trzyletniego rozpoczyna się od pierwszej z następujących dat: daty <u>doręczenia</u> protokołu kontroli albo daty <u>doręczenia</u> decyzji podatkowej.	The three year period starts with the first of the following dates: date of <u>delivery</u> of tax audit report (<i>protokołu kontroli</i>) or date of <u>delivery</u> of tax decision (<i>decyzji podatkowej</i>).
PT	Data da <u>notificação legal</u> do aco de liquidação efetuado pela Autoridade Tributária e Aduaneira, ou data da liquidação efetuada pelo contribuinte, quando incluir o ajustamento do lucro tributável que origine ou seja susceptível de originar uma dupla tributação. Constitui notificação o <u>recebimento</u> pelo contribuinte de cópia do assento do aco de liquidação	Date of <u>legal notification</u> of the assessment or re-assessment act (aco de liquidação) made by the tax authority or the date of the self-assessment (auto-liquidação), if it includes the taxable profit adjustment which results or is likely to result in double taxation Notification means the <u>receipt</u> by the taxpayer of the tax assessment or re-assessment notice
RO	Nu există o prevedere specifică încorporată în legislația națională cu privire la momentul de începere a termenului de 3 ani în sensul art. 6 (1) din Convenția de arbitraj. Din punctul de vedere al Autorității Competente, se aplică următoarea regulă: data de începere a termenului de 3 ani în sensul art. 6 (1) din Convenția de arbitraj este data <u>comunicării</u> deciziei finale de impunere de către autoritățile fiscale (<i>în cazul în care aceasta include ajustările prețurilor de transfer</i>)	There is no specific provision embedded in the national legislation regarding the starting point of the 3 years period in the sense of art. 6 (1) of the Arbitration Convention. From the point of view of the Competent Authority, the following rule applies: the starting point of the 3 years period in the meaning of art. 6 (1) of the Arbitration Convention is the date of the <u>communication</u> , by the tax authorities of the final tax assessment (decizie de impunere) (<i>if it includes the transfer pricing adjustments</i>)
SE	“Grundläggande beslut om årlig taxering” “Omprövningsbeslut” “Eftertaxering”	The date of <u>sending</u> of: <ul style="list-style-type: none"> • the basic decision on the annual taxation (<i>Grundläggande beslut om årlig taxering</i>); • the re-assessment decision (<i>Omprövningsbeslut</i>); or • the additional assessment (<i>Eftertaxering</i>). <p>[<i>In Sweden the relevant decision would be the first decision of the tax authorities</i>]</p>

		<i>that results or is likely to result in double taxation, e.g. due to a transfer pricing adjustment]</i>
SI	Za začetek teka triletnega obdobja se šteje datum <u>vročitve</u> odločbe o davčni odmeri ali enakovreden dokument [ki ima za posledico, dvojno obdavčitev].	The date on which the taxpayer <u>receives</u> the first tax assessment notice (<i>odločbe o davčni odmeri</i>) or equivalent [that results in double taxation].
SK	Doručenie protokolu o daňovej kontrole alebo protokolu o určení dane podľa pomôcok sa považuje za úkon smerujúci na vyrubenie dane.	The delivery (<u>receipt</u>) of the record (protocol) from the tax inspection (protokolu o daňovej kontrole) or the protocol about alternative determination of tax liability (protokol o určení dane podľa pomôcok) is referred as the action resulting in the tax assessment.
UK	As stated in our Statement of Practice SP01/11 HMRC will regard the first notification as being the finalisation of a transfer pricing enquiry which gives rise to double taxation. This stage will be marked by the determination of the quantum of the additional profits arising from a transfer pricing adjustment such as the issue of a closure notice, or the amendment of a return during an enquiry. The starting point will be the date of issue of the related notice, letter or amendment.	--

ANNEX 3

Tax collection and interest charges during cross border dispute resolution procedures (point 10 Code of Conduct)

Member State	Information on the state of play in each Member State as regards suspension of tax collection and on interest charges <i>(Last update: March 2015)</i>
AT	<p><u>Tax collection during cross-border dispute resolution procedures:</u></p> <p>In Austria requests to suspend collection of tax can be made in the course of a mutual agreement procedure if an appeal has been filed. Depending on the case, a suspension of tax collection may be available upon request if the amount of the tax is directly or indirectly dependent on the outcome of an appeal filed by the taxpayer (section 212a BAO). Suspension of tax is not granted if it seems to be less likely that the appeal will be successful, or the appeal challenges a decree as to matters that do not deviate from a submission of the taxpayer, or the conduct of the taxpayer aims at endangering the collection of the tax.</p> <p>Alternatively, irrespective of whether an appeal has been filed, unilateral relief may be available in order to avoid international double taxation or for reciprocal treatment (section 48 BAO).</p> <p>In addition, in certain cases taxes due can be deferred (section 212 BAO).</p> <p><u>Interest during cross-border dispute resolution procedures:</u></p> <p>Under current Austrian legislation, interest on taxes for which collection is suspended in an appeal procedure is charged at the normal rate of 2% added to the base interest rate of the European Central Bank, to the extent the tax assessment is not eliminated in the domestic appeal or in a MAP (section 205 BAO). Correspondingly, if an amount of tax that has already been paid is reduced at a later point in time as a consequence of an appeal, the taxpayer may request the payment of interest in the amount of 2% above the base interest rate for the time between payment of the tax and announcement of the decree reducing the amount of tax (section 205a BAO).</p> <p>If taxes due are deferred (section 212 BAO), interest at the rate of 4.5% added to the base interest rate of the European Central Bank may be charged for deferred payment of taxes.</p>

BE	<p>There are no specific rules dealing with suspension of tax in Belgium. Standard domestic rules apply and, collection is suspended during the mutual agreement or arbitration procedure, at the request of the taxpayer, up to the amount of the disputed tax.</p> <p>Standard domestic rules apply also regarding interest: if the request of the taxpayer is rejected, late payment interest will be calculated on the period of the tax collection. If the taxpayer has paid the tax, default payments are due in case of exemption of the tax at the end of the mutual agreement or arbitration procedure (article 418, CIR 92).</p>
BG	<p>There are no specific rules dealing with suspension of tax in Bulgaria. Standard domestic rules apply and, collection cannot be suspended during the arbitration procedure.</p> <p>Standard domestic rules apply also regarding interest: Interest, which apply for the late payment of tax, are charged on unpaid tax and interest, which is payable if the overpaid tax was caused by the tax administration, is included in repayments.</p>
CY	<p>The Code of Conduct (2006/C 176/02) and the Revised Code of Conduct (2009/C 322/01), and the suspension of tax collection, have been implemented in Cyprus by Administrative Regulatory Act No. 87 / 2007 (Official Gazette No.4176, 23.2.2007) and Administrative Regulatory Act No. 463 / 2010 (Official Gazette No.4460, 19.11.2010) respectively. Copies in Greek may be accessed through the Tax Department Website through the following links</p> <p>http://www.mof.gov.cy/mof/ird/ird.nsf/All/F91DCA251742B13EC2257688004577E5/\$file/2007%20087%20kdp%20inc%20tax.pdf</p> <p>http://www.mof.gov.cy/mof/ird/ird.nsf/All/3C06F257383E078BC22577F40024BA22/\$file/2010%20463.pdf</p> <p>Both the above Administrative Regulatory Acts provide for interpretation of the Arbitration Convention in accordance with the provisions of the respective Codes of Conduct and for suspension of tax collection during dispute resolution procedures under the Arbitration Convention. There is no provision in the Cyprus tax legislation for the interest on unpaid taxes to be waived in case of a Mutual Agreement Procedure (MAP). Normal rules apply in case of interest on unpaid tax and interest on repayment of tax as a result of an adjustment in a MAP, in the same way as for other adjustments</p>

CZ	<p>There are no specific rules dealing with suspension of tax in Czech Republic. Standard domestic rules apply and, collection cannot be suspended during the arbitration procedure.</p> <p>Standard domestic rules apply also regarding interest: Interest, which apply for the late payment of tax, are charged on unpaid tax and interest, which is payable if the overpaid tax was caused by the tax administration, is included in repayments. According to domestic rules, in both cases, Interest is calculated as the National Bank’s repo-rate (effective on the first day of the relevant half-year) increased by 14 percentage points.</p>
DE	<p><u>Tax collection during cross-border dispute resolution procedures</u></p> <p>Under current German legislation, suspension of tax collection is possible where a domestic administrative appeal has been filed and (1) where either serious doubts exist as to the legality of the tax assessment being disputed or (2) where collection without awaiting the outcome of the appeal would result for the person affected in unreasonable hardship not required by overriding public interests; suspension may be made dependent upon provision of collateral (so-called “<i>Aussetzung der Vollziehung</i>”, section 361 para. 2 of the Fiscal Code or <i>Abgabenordnung</i>). A similar rule on suspension of collection exists where a tax assessment is appealed against in court (section 69 of the Tax Court Code or <i>Finanzgerichtsordnung</i>).</p> <p>In situations without pending domestic appeal, collection can be deferred where collection at due date would result in considerable hardship for the debtor and the claim does not appear to be endangered by the deferment; such deferment may be granted as a rule only upon application and provision of collateral (so-called “<i>Stundung</i>”, section 222 of the Fiscal Code or <i>Abgabenordnung</i>).</p> <p>The sections referred to are general rules not specifically addressing cross-border dispute situations.</p> <p>In practice, in most mutual agreement procedure cases involving a German transfer pricing adjustment, the taxpayer also filed a domestic administrative appeal which remains pending during the MAP, and tax collection is suspended in application of the first mentioned rule where the taxpayer requests such suspension. In many of the less frequent MAP cases involving a German adjustment but without pending domestic appeal, deferment under the latter rule is applied.</p> <p>The local tax offices are in charge of granting suspension or deferment. It has not come to the attention of the Federal Ministry of Finance or the Federal Central Tax Office that there would be cases where both suspension and deferment were rejected in a situation with a pending MAP concerning a German adjustment. The Federal Ministry of Finance therefore currently does not see a necessity for proposing specific legislation addressing suspension of collection in case of pending</p>

	<p>MAPs.</p> <p><u>Interest during cross-border dispute resolution procedures</u></p> <p>Under current German legislation, interest on taxes for which collection is suspended or deferred is charged at a rate of 6% p.a., to the extent the tax assessment is not eliminated in the domestic appeal or in the MAP. Interest at the same rate is also charged for the time between the tax year and the adjusted assessment (but starting only 15 months after the tax year, and likewise only to the extent the adjusted assessment is not eliminated in a domestic appeal or MAP). Where tax has been collected and the assessment is later reduced in a domestic appeal or MAP, the taxpayer receives 6% interest on the repayment. This is general legislation not specifically addressing cross-border dispute situations.</p> <p>In MAP situations, Germany applies the approach described in point 8(b)(iii) of the Revised Code of Conduct, i.e. any disadvantages a taxpayer may have due to different interest approaches in the other country will be considered when attempting to come to a mutual agreement where the taxpayer so requests. Taxpayers should address any potential interest issues in the MAP request and provide the competent authorities with information on the differences in the interest rules that will likely cause a problem.</p>
DK	<p>In Denmark it is possible to suspend the tax collection during dispute resolution procedures under the AC. The terms for suspension are similar to the terms for suspension in case of a complaint to the National Tax Tribunal.</p> <p>We have no specific provision dealing with interest on unpaid tax in relation to a suspension of the tax collection during dispute resolution procedures under the AC. As in other situations where the tax collection is suspended interest is charged on unpaid tax and interest is included in repayments.</p>
EE	<p>There are no specific rules dealing with suspension of tax in Estonia. Standard domestic rules apply. Generally, collection cannot be suspended during the arbitration procedure and tax must be paid. Limited options for postponing/delaying the tax payment exist, subject to a decision by the tax authorities or the Ministry of Finance</p> <p>Standard domestic rules apply also regarding interest: Interest, which applies for the late payment of tax, are charged on unpaid tax (The rate is 0.06 per cent per day according to § 117 (1) of the Estonian Taxation Act).</p> <p>Accordingly, the same interest rate applies to amount, which is payable if the overpaid tax was caused by the tax administration.</p>
FI	<p>Tax collection cannot be deferred during dispute resolution under AC in Finland.</p>

	Interest charges and refunds depend on the applicable article of the domestic legislation.
FR	<p>There are no specific rules dealing with suspension of tax in France. Standard domestic rules apply. Collection can be suspended during the arbitration procedure, when the taxpayer requests for a tax differal as part of a claim and litigation procedure under domestic rules.</p> <p>Standard domestic rules apply also regarding interest when a claim or litigation has been filed: Interest, which applies for the late payment of tax, are charged on unpaid tax. Accordingly, interest is included in repayments of overpaid tax.</p>
EL	<p>There are no specific rules dealing with suspension of tax in Greece. Standard domestic rules apply. Generally, collection cannot be suspended during the arbitration procedure and tax must be paid except in a limited number of situations in case of Internal Administration Appeal and when the case is submitted to the Courts.</p> <p>Standard domestic rules apply also regarding interest: Interest, which applies for the late payment of tax, are charged on unpaid tax. Accordingly, interest, which is payable if the overpaid tax was caused by the tax administration, is included in repayments..</p>
ES	<p>As regards suspension and interests, Spain has especial law rules in both cases. Suspension of collection is granted automatically on request of the taxpayer, on the same principles required for suspension in case of domestic appeals and there are no accrued interests during the time of the MAP proceedings, according to the JTPF recommendation 8 (b) (i) of the Code of Conduct.</p> <p><i>Drafting of both provisions:</i></p> <p><i>Disposición Adicional Primera de la Ley del Impuesto sobre la renta de no Residentes</i></p> <p><i>5. Durante la tramitación de los procedimientos amistosos no se devengarán intereses de demora.</i></p> <p><i>6.</i></p> <p><i>1.º En los procedimientos amistosos, el ingreso de la deuda quedará suspendido automáticamente a instancias del interesado cuando se garantice su importe y los recargos que pudieran proceder en el momento de la solicitud de la suspensión, en los términos que reglamentariamente se establezcan.</i></p> <p><i>No se podrá suspender el ingreso de la deuda, de acuerdo con lo previsto en el párrafo anterior, mientras se pueda solicitar la suspensión en vía administrativa o jurisdiccional.</i></p> <p><i>2.º Las garantías admisibles para obtener la suspensión automática a la que se refiere el número anterior serán exclusivamente las siguientes:</i></p> <p><i>a) Depósito de dinero o valores públicos.</i></p> <p><i>b) Aval o fianza de carácter solidario de entidad de crédito o sociedad de garantía recíproca o certificado de seguro de</i></p>

	<p><i>caución.</i></p> <p><i>3.º Si los procedimientos amistosos no se refieren a la totalidad de la deuda, la suspensión prevista en este apartado se limitará al importe afectado por los procedimientos amistosos.</i></p> <p><i>[Unofficial Translation]</i></p> <p>First additional Provision of the Amended Text of the Non Residents Income Tax Law (Mutual Agreement Procedure):</p> <p><i>5. No late payment interests will accrue during mutual agreement procedures.</i></p> <p>6.</p> <p><i>1. In mutual agreement procedures, the payment of the tax due will be automatically suspended at the request of the interested party provided that at the time of the request for suspension the amount, including any surcharge payable, is guaranteed under the terms formally provided for.</i></p> <p><i>The debt cannot be suspended under the terms of paragraph above while the suspension is still available by administrative or jurisdictional procedures.</i></p> <p><i>2. In order to obtain the automatic suspension referred to in paragraph 1 above, only the following guarantees are eligible:</i></p> <p><i>a) Deposit of money or government securities.</i></p> <p><i>b) Bank surety or guarantee issued by the credit institution or mutual guarantee company, or security insurance certificate.</i></p> <p><i>3. Should the mutual agreement procedure cover only part of the debt, the suspension provided for in this paragraph shall be limited to the amount so covered.”</i></p>
HR	<p>There are no specific rules dealing with suspension of tax in Croatia. Standard domestic rules apply and, generally, collection of tax cannot be suspended.</p> <p>Standard domestic rules apply also regarding interest: Interest, which applies for the late payment of tax, are charged on unpaid tax. (yearly interest rate of 12%). Accordingly, interest can be paid upon repayment of overpaid tax subject to a request for refund by the taxpayer and after expiry of the legal refund period.</p>

<p>HU</p>	<p>According to Article 42 (8) of Act XXXVII of 2013 if the resolution (ruling) is likely to be reversed or annulled, or a measure of similar effect is expected in accordance with Article 6 or 7 of the Convention on arbitration procedures, the tax authority shall suspend the enforcement of the resolution (ruling) at the debtor's request, or by order of its superior authority or if so notified by the competent authority. In accordance with the general rules in the lawsuit initiated for the judicial review of the Hungarian tax authority's resolution also the court can decide on the suspension of enforcement at the taxpayer's request (the enforcement proceeding shall be discontinued, if a petition lodged for the first time for the suspension of enforcement is pending in the judicial review of the tax authority's resolution).</p> <p>There are no special provisions dealing with interest charges during cross border dispute resolution procedures.</p> <p>In Hungarian: <i>A 2013. évi XXXVII. törvény 42. § (8) bekezdése szerint Magyarországon lehetséges a végrehajtás felfüggesztése ha a Választottbírói Egyezmény 6. vagy 7. cikke szerinti eljárás alapján a határozat (végzés) megváltoztatása vagy megsemmisítése, illetve ezzel azonos hatású intézkedés várható, az állami adóhatóság az adós kérelmére, a felettes szerve rendelkezésére vagy az illetékes hatóság értesítése alapján a határozat (végzés) végrehajtását felfüggeszti. Az általános szabályoknak megfelelően az adózó kérelmére a magyar adóhatósági határozat bírósági felülvizsgálata iránt indított perekben a bíróság is dönthet a végrehajtás felfüggesztéséről (a végrehajtási eljárás szünetel, ha az adóhatósági határozat bírósági felülvizsgálata során az első alkalommal előterjesztett végrehajtás felfüggesztése iránti kérelmet jogerősen még nem bírálták el).</i></p> <p><i>Magyarországon nincsenek különös rendelkezések a nemzetközi vitarendezési mechanizmusok tekintetében érvényesülő kamatszámításra vonatkozóan.</i></p>
<p>IE</p>	<p>Suspension of tax collection: Under Irish legislation there is no suspension of tax collection. A taxpayer may not appeal against a Revenue assessment or amended assessment until the return is filed and any tax due paid. The tax payer must pay, at a minimum, the undisputed amount of tax.</p> <p>Interest charges during MAP: Ireland adopts a case by case approach to the mitigation of interest and penalties during a Mutual agreement procedure. The mitigation is applied after taking account of all relevant circumstances of a MAP. Claims for mitigation must be made in writing and be supported by documentary evidence.</p>

IT	<p>As far as it regards the suspension of tax collection during a MAPAC, the Italian law n.99 of 22 March 1993, which ratified the Arbitration Convention, already provided for the suspension of the collection or of the execution proceedings to international disputes started in accordance with the Arbitration Convention.</p> <p>With reference to interest charges during MAP, Italy applies the approach described in point 10 b ii of the Revised Code of Conduct: interest is charged on unpaid tax and interest is included in repayments.</p>
LU	<p>There are no specific rules dealing with suspension of tax in Luxembourg. Standard domestic rules apply. In this respect, there is no formal procedure and tax to be paid may be suspended.</p> <p>Standard domestic rules apply regarding interest: Interest, which applies for the late payment of tax, is charged on unpaid tax (interest charge of 0.6 percent per month). Under domestic law, no interest is payable when a refund is due to the taxpayer.</p>
LT	<p>According to Lithuania Law on Tax Administration (Article 110) it is possible to suspend collection of taxes. This article applies to internal and cross-border dispute situations.</p> <p>Standard domestic rules apply regarding interest: Interest, which applies for the late payment of tax, is charged on unpaid tax. Under domestic law, no interest is payable when a refund is due to the taxpayer.</p>
LV	<p>There are no specific rules dealing with suspension of tax collection in Latvia. Standard domestic rules apply. In this respect, there is no formal procedure.</p> <p>Standard domestic rules apply regarding interest: Interest, which applies for the late payment of tax, is charged on unpaid tax (0.05 percent rate for each overdue day).. Under domestic law, depending on circumstances two thirds or a half of standard interest rate (0.05% per day) is payable when <u>the payments erroneously recovered by the tax administration are refunded to the taxpayer.</u></p>
MT	<p>There are no specific rules dealing with suspension of tax in Malta. Standard domestic rules apply. In this respect, there is no formal procedure.</p> <p>Standard domestic rules apply regarding interest: Interest is payable at a rate of 0.75% per month or part thereof on any unpaid balances and outstanding refunds.</p>
NL	<p><i>8.1 Deferral of tax payment</i></p> <p>If the Netherlands is the state causing the double taxation (by, for example, making an adjustment in the income reported by a taxpayer), the Dutch tax administration will, at the taxpayer's request, grant a deferral of payment on that part of the tax</p>

	<p>charge that relates to the double taxation. It should be noted that in the event of a request for an early mutual agreement procedure, deferral will automatically be granted. In principle, deferral will be granted until both the domestic and the international procedures for resolving the dispute have been completed. The policy in this respect will be based on the policy applying to objections lodged against tax assessments (see Article 25(2) of the Tax Collection Guidelines (<i>Leidraad Invordering</i>) 2008). This means that the taxpayer will not suffer any loss of interest other than the obligatory assessment and collection interest (see section 8.2). This resolves the interest and financing problems that can result from mutual agreement and arbitration procedures. In certain exceptional cases, deferral can also be granted if the other state makes an adjustment (see Article 25(2) referred to above).</p> <p><i>8.2 Assessment and collection interest / Penalties</i></p> <p>In addition to the actual adjustment or correction discussed in the mutual agreement or arbitration procedures, differences in domestic regulations in respect of the assessment and collection interest charged by states may result in a disproportional increase in the interest payable during the mutual agreement procedure. In some cases, the interest payable may even exceed the amount of the tax. Article 30k of the Dutch State Taxes Act (<i>Algemene wet inzake rijksbelastingen</i>) and Article 31a of the Dutch Collection of State Taxes Act (<i>Invorderingswet</i>) 1990 allow parties to deviate in certain instances from the provisions in domestic law while they are consulting on a mutual agreement procedure. During the course of mutual agreement and arbitration procedures the Netherlands' competent authority will seek to align the assessment and collection interest charged to the taxpayer in one state with that payable to the taxpayer in the other state. A protocol to this effect has, for example, been agreed with France. If a mutual agreement procedure being conducted also covers a penalty that has been imposed, the policy applied will be in line with Article 25(2)(4) in conjunction with Article 25(2)(3) of the Tax Collection Guidelines 2008.</p>
PL	<p>There are no specific rules dealing with suspension of tax in Poland. Standard domestic rules apply and, generally, collection of tax cannot be suspended.</p> <p>Standard domestic rules apply also regarding interest: Interest, which applies for the late payment of tax, is charged on unpaid tax (2 percent plus 200 percent of the Lombard rate published by the Central Bank i.e., approximately 8 percent p.a. as of 9 October 2014, see http://www.finanse.mf.gov.pl/abc-podatkow/tabela-stawek-odsetek-za-zwloke-od-zaleglosci-podatkowych). Interest can be paid upon repayment of overpaid tax only in situations where the refund is overdue (i.e., tax authorities are late with the payment of the refund).</p>

PT	<p>There is no specific provision dealing with the suspension of tax collection during dispute resolution procedures under the Arbitration Convention. According to the Portuguese tax legislation, enterprises engaged in such procedures can benefit from suspension of tax collection under the same terms and conditions as those engaged in a domestic appeal or litigation procedure, by presenting a bank or similar guarantee.</p> <p>In the domestic tax law, there is no specific provision regarding the interest charges on unpaid tax during the course of the MAP procedure under the Arbitration Convention. The normal rules charging interest on unpaid tax apply in the same way as for domestic appeals and litigation procedures.</p>
RO	<p>Under the Romanian tax legislation there is no provision allowing suspension of the tax collection until a MAP is concluded. However, in general suspension of tax collection is possible where a judicial appeal has been initiated by the taxpayer.</p> <p>Standard domestic rules apply regarding interest: Interest, which applies for the late payment of tax, is charged on unpaid tax (0.04 percent per day interest; and 0.02 percent per day penalties for late payment). Compensatory interest can also be paid upon repayment of overpaid tax only in situations where a refund is due to the taxpayer and the legal deadline for payment of the refund is not met</p>
SE	<p>8 (a) CoC (suspension of tax collection)</p> <p>According to Swedish law (Skatteförändelagen, Chapter 63, Section 4) the competent authority of Sweden may grant a deferral to pay the tax, which is the subject of a competent authority case. This practice is applied fairly generously in Sweden. However, the taxpayer must have been subject to double taxation and the tax must have been paid in the other country in order for the deferral to be granted. Since many years it is the practice of Sweden to grant a deferral with the Swedish tax claim attributed to the disputed income or with an amount corresponding to the foreign tax on that income, whichever is the lowest.</p> <p>8 (b) CoC (interest charges during MAP)</p> <p>Sweden applies the following approach according to 8 (b) CoC:</p> <p>(ii) tax to be released for collection and repaid with interest</p>
SI	<p>In Slovenia the provisions relating to the tax collection and interest charges are governed in the Tax Procedure Act. According to those provisions tax is collected and interest is charged notwithstanding the type of remedy used (that is domestic appeal (litigation procedure) or dispute resolution procedure under the EU Arbitration Convention or Bilateral Tax Treaty). If the outcome of the remedy used is favourable to the taxpayer, the taxpayer is being reimbursed for the tax</p>

	collected with interest.
SK	<p>There are no specific rules dealing with suspension of tax in the Slovak Republic. Standard domestic rules apply and, generally, collection of tax can be suspended.</p> <p>First of all, the tax administration procedures can be interrupted in accordance to Article 61 of Tax Procedural Code, which has been also invoked in cases of initiation of Mutual Agreement Procedures in respect of Transfer Pricing cases.</p> <p>In addition to this, Article 57 permits suspension of tax collection.</p> <p>Standard domestic rules apply also regarding interest: Interest, which applies for the late payment of tax, is charged on unpaid tax (four times the European Central Bank (ECB) basic rate, or 15 percent -whichever is higher- per annum).</p> <p>Interest can be paid upon repayment of overpaid tax only in situations where the refund is overdue (i.e., tax authorities are late with the payment of the refund). The interest rate in this case is (three times the ECB basic rate or 10% percent - whichever is higher - per annum.</p>
UK	<p>In the UK requests to suspend collection of tax when an application is made under the EU AC can be made. Where there is no open appeal, and thus no domestic legal basis for suspension, informal arrangements may be made to not pursue collection pending the outcome of the MAP.</p> <p>There is no provision in UK law for the interest on unpaid tax to be waived because the matter has been subject to MAP. Our normal rules charging interest on unpaid tax, and including interest on repayments, apply in the same way as for any other adjustment formally or informally stoodover.</p>