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**EU JOINT TRANSFER PRICING FORUM**

**QUESTIONNAIRE ON THE INTERACTION BETWEEN MAP**

**AND JUDICIAL APPEALS**

**ART 7.3 OF THE ARBITRATION CONVENTION**

**Meeting of 21<sup>st</sup> February 2008**

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# Questionnaire on Article 7(3) of the Arbitration Convention

## 1. Background information

The inter-action of domestic legal procedures with the Arbitration Convention is recognised by many observers as a difficult area. Some MS have previously attempted to clarify their positions so that taxpayers can better understand the options open to them to resolve double taxation. However, the positions of not all MSs are clear. The Forum has therefore decided first to clarify the status quo and if possible identify improvements in this area that can be made to ensure the better elimination of double taxation in the EU.

This questionnaire attempts to clarify the position over what is meant by Article 7(3) of the Arbitration and what it actually means to apply or not to apply that Article.

### **1.1. Article 7 of the Arbitration Convention**

**This article states:**

"1. If the competent authorities concerned fail to reach an agreement that eliminates the double taxation referred to in Article 6 within two years of the date on which the case was first submitted to one of the competent authorities in accordance with Article 6 (1), they shall set up an advisory commission charged with delivering its opinion on the elimination of the double taxation in question.

Enterprises may have recourse to the remedies available to them under the domestic law of the Contracting States concerned; however, where the case has so been submitted to a court or tribunal, the term of two years referred to in the first subparagraph shall be computed from the date on which the judgment of the final court of appeal was given.

2. The submission of the case to the advisory commission shall not prevent a Contracting State from initiating or continuing judicial proceedings or proceedings for administrative penalties in relation to the same matters.

**3. Where the domestic law of a Contracting State does not permit the competent authorities of that State to derogate from the decisions of their judicial bodies, paragraph 1 shall not apply unless the associated enterprise of that State has allowed the time provided for appeal to expire, or has withdrawn any such appeal before a decision has been delivered. This provision shall not affect the appeal if and in so far as it relates to matters other than those referred to in Article 6.**

4. The competent authorities may by mutual agreement and with the agreement of the associated enterprises concerned waive the time limits referred to in paragraph 1.

5. In so far as the provisions of paragraphs 1 to 4 are not applied, the rights of each of the associated enterprises, as laid down in Article 6, shall be unaffected."

## **1.2. List of Member States having made a unilateral statement declaring that they will apply Article 7(3):**

In 1995:

- France
- and the United Kingdom

In 2005:

- Belgium,
- the Czech Republic,
- Latvia,
- Hungary,
- Poland,
- Portugal,
- Slovakia
- and Slovenia

Regrettably, it is not clear what is meant by "apply."

## **2. Questionnaire**

In order to assess the situation prevailing in each Member State it was agreed by the members of the JTPF to clarify how their tax administration applies Article 7 (3) in practice. It was considered that this situation can lead to long delays in the application of the Arbitration Convention and the elimination of double taxation. **Therefore Member States are invited to complete the following questionnaire and to send their answers to the JTPF secretariat by Thursday 20<sup>th</sup> December 2007.**

### **Question 1:**

Considering Art. 7(3) "*Where the domestic law of a Contracting State does not permit the competent authorities of that State to derogate from the decisions of their judicial bodies, paragraph 1 shall not apply unless the associated enterprise of that State has allowed the time provided for appeal to expire, or has withdrawn any such appeal before a decision has been delivered.*", can your Member State/Tax administration derogate from the decisions of their judicial bodies?

### **Question 2:**

Those MS who can derogate, what do they consider to be a judicial body and when is the decision considered as final?

**Question 3:**

3.1 Those MS who can derogate, do they actually derogate in practice?

3.2 If the case has so far never arisen, would those countries who can derogate be willing to derogate in practice?

**Question 4:**

MS who cannot derogate, do they stop in practice all negotiations with the other MS or do they continue and inform the taxpayer once they have reached an agreement so that he has the choice to see the agreement implemented or to continue with his judicial appeals?

**Question 5:**

In general it may be useful to learn about any experience with the application of art 7(3). Where it is not yet covered by your answers to the previous questions could you describe your national experiences?

## Answers to question 1:

Considering Art. 7(3) "Where the domestic law of a Contracting State does not permit the competent authorities of that State to derogate from the decisions of their judicial bodies, paragraph 1 shall not apply unless the associated enterprise of that State has allowed the time provided for appeal to expire, or has withdrawn any such appeal before a decision has been delivered.", can your Member State/Tax administration derogate from the decisions of their judicial bodies?

<b>Member State</b>	<b>Question 1</b>
Austria	No In Austria it is not possible to derogate from decisions of the Supreme Administrative Court (Verwaltungsgerichtshof) or from decisions of the Supreme Constitutional Court (Verfassungsgerichtshof).
Belgium	NO
Bulgaria	No
Cyprus	No
Czech Republic	No Generally any decision of the Tax administration must be in accordance with the decision of the Court
Denmark	No
Estonia	No
Finland	In principal, <b>yes</b> . If the result of an MAP –procedure is to reduce the taxes payable in Finland, the domestic decision is made on the basis of Sec 89 of the Act on Taxation Procedure, which in turn refers to a consideration of expediency. Therefore the final result may deviate from an eventual court decision in the case. Please note however, that Finland does not generally enter into MAPs if the taxpayer has commenced appeals procedures; a MAP may be launched when the final decision is reached (see below)
France	Selon le paragraphe 3 de l'article 7 de la convention européenne d'arbitrage, dans les cas où la législation interne d'un Etat contractant ne permet pas aux autorités compétentes de déroger aux décisions de leurs instances judiciaires, la procédure d'arbitrage n'est possible que si l'entreprise a laissé s'écouler le délai de présentation du recours auprès des juridictions nationales ou s'est désistée de ce recours avant qu'une décision ait été rendue. Par décision des instances judiciaires, il faut entendre une décision juridictionnelle, résultant en France du juge administratif qui est seul compétent en matière d'impôts directs visés par la convention européenne d'arbitrage.  Dans sa déclaration unilatérale faite le jour de la signature de cette convention, la France a indiqué qu'elle ferait application de cette disposition. En effet, le principe de l'autorité de la chose jugée ne permettrait pas aux autorités compétentes de se conformer à l'avis d'une commission consultative constituée si elles devaient, ce faisant, remettre en cause une décision de justice passée en force de chose jugée. Par conséquent, les contribuables concernés devront donc faire le choix soit de poursuivre une procédure

	<p>juridictionnelle jusqu'à son terme, soit d'y renoncer afin que la phase d'arbitrage de la convention puisse être conduite</p> <p>Ainsi, en application de ces principes, en cas de recours contentieux exercé par l'entreprise, le délai de deux ans prévu au paragraphe 1 de l'article 7 de la convention d'arbitrage au terme duquel la commission consultative doit être constituée, à défaut d'avoir trouvé un accord dans le cadre de la procédure amiable, commencera à courir à partir du moment où l'entreprise se sera désistée de son recours</p> <p>Ce report du point de départ du délai de deux ans s'applique dès lors qu'un recours de droit interne est exercé contre une décision que ce soit devant l'administration ou devant un tribunal. En effet, selon le droit interne français, les contestations élevées par les contribuables sont d'abord obligatoirement soumises par voie de réclamation à l'administration des impôts et le contribuable peut ensuite porter le litige devant la juridiction compétente</p>
Germany	The German revenue administration may, on the basis of Section 175a of the <i>Abgabenordnung</i> (Fiscal Code), derogate from the decisions of the German fiscal courts where the implementation of a mutual agreement understanding is concerned
Greece	The Hellenic Tax Authorities <b>can not derogate</b> from the decisions of judicial bodies, due to constitutional reasons. The judicial bodies responsible for tax disputes are the Administrative Courts: Administrative Court of first Instance, Administrative Court of Appeal, and Council of State
Hungary	No, Due to constitutional and administrative reasons
Italy	No
Ireland	No
Latvia	No Latvia's State Revenue Service can not derogate from the decision of judicial bodies. The judicial body in this context is Administrative Court (three instances: District Administrative Court, Regional Administrative Court, Administrative Department of Senate of Supreme Court). According to the 6th paragraph of Article 37 of Law on Taxes and Fees a taxpayer can appeal the State Revenue Services General Directors decision to a Court. Administrative Department of Senate of Supreme Court is the last instance which hears administrative cases in cassation procedure. In accordance with Article 351 of Administrative Procedure Law this judgment is final and can not be appealed
Lithuania	NO
Luxembourg	
Malta	No Malta cannot derogate
Netherlands	<b>Yes</b>
Poland	No According Polish rules, the tax administration can not derogate from decision

	of Polish judicial bodies concerning administrative decision based on given state of affairs. It means, that due to Polish provisions regulating procedure before administrative courts, the legally valid judicial decision (final decision) is obliging to the tax administration involved in individual case. Judicial decision is final when the appeal is not allowed
Portugal	<p style="text-align: center;">No</p> <p>Considering that the Constitution of the Portuguese Republic establishes that any court decision will be bounding and mandatory for all public and private entities and has prevalence over decisions from any other authority, Portugal made a statement to clarify that the provisions of Art. 7(3) of the AC shall be applied.</p> <p>The juridical effects from a judicial decision can't, therefore, be modified by a decision from the Tax Administration or by a solution reached within the scope of a mutual agreement procedure</p>
Romania	<p style="text-align: center;">No</p> <p style="text-align: center;">Tax administration cannot derogate from a court decision</p>
Slovak Republic	<p style="text-align: center;">No.</p> <p><u>Commentary:</u> According to the Section 53 para. 11 of the Slovak Tax Administration Act (No. 511/1992 Coll.), if the court decided on a lawsuit by which the decision had been challenged; this decision, according to the aforementioned law, could not be examined to the extent, within which the court decided. According to the Section 250j para. 6 of the Civil Judicial Order, administrative bodies are bound by the legal opinion of the court and according to the Section 250 1a of the Civil Judicial Order, the court of first instance as well as the administrative body are bound by the legal opinion of the court of appeal. According to the Section 250k para. 2, if the new decision was delivered after dissolution of the decision issued by the administrative body and this decision to the new compliant was dissolved again, because the administrative body had derogated from the legal opinion expressed in the first judgement without having changed the state of facts or legal state, the court would oblige the administrative body to refund all costs (law expenses) to the complainant</p>
Slovenia	No. In case of Slovenia the Slovene Tax administration can not derogate the decisions taken by judicial bodies
Spain	Spanish Constitution does not allow tax administration to act against a judicial decision
Sweden	<p style="text-align: center;"><b>Yes,</b></p> <p>the Swedish Competent Authority can derogate from the decisions of the judicial bodies if this follows from a provision in a Double Taxation Agreement or another agreement to eliminate double taxation such as the Arbitration Convention (Chapter 7 Paragraph 4 of the Tax Assessment Act (1990:324)</p>
United Kingdom	<b>Yes. UK law (S815B Taxes Act 1988) enables the UK tax administration to give effect to outcomes reached under the Convention</b>





## Answers to question 2

Those MS who can derogate, what do they consider to be a judicial body and when is the decision considered as final?

Member State	Question 2
Austria	NA
Belgium	NA
Bulgaria	NA
Cyprus	NA
Czech Republic	NA
Denmark	NA
Estonia	NA
Finland	The assessment adjustment board is the first instance of appeal in every tax district and, thus, can be considered as judicial body. The Administrative Courts are also considered as judicial bodies. Administrative Courts deal with appeals against decisions made by the authorities and administrative disputes. The decision is considered as final when it has reached a legal validity, i.e. when the appeal period has expired, the Supreme Administrative Court has given its decision or the right to appeal has been denied
France	Sans objet compte tenu de la réponse à la question 1
Germany	<p>A decision is considered final where a judgement has the force of <i>res judicata</i> and, in particular, a tax assessment notice becomes legally enforceable. The tax assessment notice itself constitutes the decisive point of reference for the ability to derogate – a legally enforceable tax assessment notice has no detrimental effect. This applies irrespective of whether the tax assessment notice was the subject of court proceedings or not. The binding effect of the tax assessment notice itself is, in fact, always the central issue.</p> <p>In this context, the “judicial body”, from the German perspective, means the fiscal courts as the judicial power for the disputes cited in Section 33 (1) of the <i>Finanzgerichtsordnung</i> (Code of Procedure for Fiscal Courts), especially public-law disputes regarding fiscal matters, insofar as the taxes are subject to the Federation’s legislative powers and are administered by the Federation or <i>Länder</i> (federal state) revenue authorities. Fiscal jurisdiction is exercised by special, independent administrative courts that are separate from the administrative authorities. At the <i>Länder</i> level, fiscal jurisdiction is exercised by the fiscal courts as the highest <i>Länder</i> courts. In the case of the Federation, the <i>Bundesfinanzhof</i> (Federal Fiscal Court) has fiscal jurisdiction</p>
Greece	NA
Hungary	NA
Italy	NA
Ireland	NA

Latvia	NA
Lithuania	NA
Luxembourg	
Malta	NA
Netherlands	The Netherlands consider a court or a tribunal to be a judicial body (i.e. in The Netherlands: Rechtbank, Gerechtshof, Hoge Raad). A decision is considered to be final if all rights to appeal are no longer open
Poland	NA
Portugal	NA
Romania	NA
Slovak Republic	NA
Slovenia	NA
Spain	NA
Sweden	<p>Sweden considers the following as a judicial body:</p> <ol style="list-style-type: none"> <li>1. Tax administration</li> <li>2. County administrative courts</li> <li>3. Administrative courts of appeal</li> <li>4. The Supreme administrative court</li> </ol> <p>The decision is considered as final when the time for appeal has elapsed.</p> <p>A decision made by the Tax administration can be reassessed. Such a reassessment can be applied for by the taxpayer before the expiration of the fifth calendar year after the assessment year.</p> <p>A reassessment made by the Tax administration can be appealed against to the County administrative court by the taxpayer before the expiration of the fifth calendar year after the assessment year.</p> <p>A decision made by the County administrative court can be appealed against to the Administrative court of appeal by the latest at two months after the day the decision of the County administrative court was announced.</p> <p>A decision made by the Administrative court of appeal can be appealed against to the Supreme administrative court, but the decision will be reconsidered by the Supreme administrative court only if the Supreme administrative court grants a leave to appeal. The decision is considered final on the day the Supreme administrative court announces its decision.</p>
United Kingdom	The General Commissioners, Special Commissioners or UK Court (High Court, Court of Appeal, House of Lords) are judicial bodies

## Answers to question 3.1 and 3.2

**3.1** Those MS who can derogate, do they actually derogate in practice?

**3.2** If the case has so far never arisen, would those countries who can derogate be willing to derogate in practice?

Member State	Question 3.1	Question 3.2
Austria	NA	
Belgium	NA	NA
Bulgaria	NA	NAN
Cyprus	NA	NA
Czech Republic	NA	NA
Denmark	NA	NA
Estonia	NA	NA
Finland	<b>No cases</b>	<b>Yes if necessary</b>
France	Sans objet compte tenu de la réponse à la question 1	
Germany	Where necessary, yes. This is the case where the tax assessment notice is actually already binding.  Wenn es erforderlich ist, ja. Dies ist der Fall, wenn der Steuerbescheid tatsächlich bereits bestandskräftig ist	Not applicable nicht angezeigt
Greece	NA	NA
Hungary	NA	NA
Italy	NA	NA
Ireland	NA	NA
Latvia	NA	NA
Lithuania	NA	NA
Luxembourg		
Malta	NA	NA
Netherlands	<b>Yes</b>	-
Poland	NA	
Portugal	NA	
Romania	NA	NA
Slovak Republic	NA	NA
Slovenia	NA	
Spain	NA	NA
Sweden	<b>Yes.</b>  There have been such cases in Sweden, though not yet under the Arbitration convention	<b>yes</b>
United Kingdom	It has not been necessary to do this in a particular case	Derogation

		<p>is a possibility that would be considered to allow the UK to uphold its obligations under the Arbitration Convention . Any possible derogation would be viewed in this context</p>
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## Answers to question 4

MS who cannot derogate, do they stop in practice all negotiations with the other MS or do they continue and inform the taxpayer once they have reached an agreement so that he has the choice to see the agreement implemented or to continue with his judicial appeals?

<b>Member State</b>	<b>Question 4</b>
Austria	In such a case the negotiations with the other MS will be stopped. An advisory commission will not be set up
Belgium	<p>Enterprises can introduce an (administrative) appeal – which may be followed by a judicial procedure as provided for in domestic law – and at the same time start the procedure under the AC.</p> <p>However, the AC provides that where the domestic law of a contracting state does not permit the competent authorities of that state to derogate from the decisions of their judicial bodies, the advisory commission shall not be set up unless the associated enterprise of that state has allowed the time provided for appeal to expire, or has withdrawn any such appeal before a decision is delivered.</p> <p>The AC guarantees expressly the res judicata associated with a judicial judgment according to domestic law. The Belgian tax administration is not empowered to conform to a decision reached at the end of an arbitration procedure where this decision questions a judicial judgement in res judicata.</p> <p>Therefore, up till now, the Belgian authorities are of the opinion that the enterprises concerned have to make a choice between either continuing the procedure provided for in domestic law or continuing the procedure provided for in the AC.</p> <p>This position is stated in Circular AFZ/INTERN IB/98-0170 of July 7<sup>th</sup>, 2000. However, this circular will be updated and will contain additional clarifications concerning MAP, the advisory commission and other elements regarding the AC</p>
Bulgaria	Bulgarian Administrative Procedure Code does not provide for a suspension of the initiated court proceedings on the grounds of pending administrative procedure (MAP). Therefore the Bulgarian Revenue Authorities, being bound to the court decision, would not be willing to proceed with the initiated MAP once a court appeal has been filed. However, the taxpayer has the option to withdraw his appeal and wait for the final MAP outcome. In such a case the Bulgarian Revenue Authorities would proceed with the negotiations with the other MS
Cyprus	No experience
Czech Republic	In practice, in case of judicial proceedings out tax administration should interrupt MAP and wait for the decision of the judicial body
Denmark	We will continue the procedure and inform the taxpayer once an agreement

	has been reached and then he has the choice to see the agreement implemented or to continue with his judicial appeals.
Estonia	It might be that we will stop negotiations
Finland	NA
France	Si cette renonciation n'est pas effectuée par l'entreprise, les discussions entre autorités compétentes dans la phase amiable de la procédure peuvent en pratique se poursuivre, le délai de deux ans n'étant réputé courir qu'à partir du moment où l'entreprise s'est désistée. Si un accord intervient durant cette période, il sera proposé à l'entreprise qui pourra l'accepter et devra alors renoncer à tout contentieux pour pouvoir en bénéficier. Dans tous les cas, si les autorités compétentes parviennent à un accord dans la phase amiable assurant l'élimination de la double imposition, ce qui est la finalité de la convention européenne d'arbitrage, et que l'entreprise n'accepte pas cet accord ou l'accepte en refusant de renoncer à un recours contentieux par ailleurs engagé, aucune commission consultative ne pourra être constituée dès lors qu'une solution amiable s'était dégagée
Germany	NA
Greece	See Q5
Hungary	As we have indicated formerly Hungary cannot give practical examples on the application of the Arbitration Convention yet. Theoretically, if there is a final judicial decision, Hungarian competent authority has to dismiss the claim and must finish the process without any delay
Italy	<p>An existing litigation does not prevent that the initial stage provided for by the Arbitration Convention – i.e. the mutual agreement procedure – is started. Therefore, the mutual agreement procedure continues even if a litigation is in progress. On the other hand, the situation is more complex with respect to the second stage provided for by the above Convention, that is the arbitration stage.</p> <p><u>Assumption n. 1. Both competent authorities reach a mutual agreement before a decision has been delivered.</u></p> <p>The Italian competent authority informs the taxpayer that they have reached an agreement. As a domestic appeal is pending, for the purposes of implementing any such agreement, the Italian competent authority needs an advance approval from the taxpayer on the content of the agreement between competent authorities and the simultaneous withdrawal of the existing appeal.</p> <p>If the taxpayer does not give its approval and does not withdraw the appeal, the agreement reached cannot be implemented. In this case, however, the taxpayer can prosecute the domestic appeal.</p> <p>Obviously, since Italy cannot derogate from the decisions already made by its judicial authorities, once the decision has been delivered, the taxpayer cannot request the implementation of the agreement.</p> <p><u>Assumption n. 2. A decision is delivered before the two competent authorities reach a mutual agreement</u></p> <p>Where a decision is delivered in favour of the Italian tax</p>

	administration <sup>1</sup> and against the taxpayer before the latter withdraws its appeal, considering that Italy cannot derogate from the decisions made by the judicial authorities, the double taxation can be avoided only if the other State considers that the assessment made in Italy is correct and accepts to make a downward adjustment. In the absence of an agreement, however, it is not possible to set up an advisory commission.
Ireland	<p>We have no experience of this aspect of the operation of the Arbitration Convention. Our general approach is that we would allow an appeal to remain open while there is a reasonable prospect of a solution being found under a mutual agreement procedure. Once an appeal comes for hearing, the taxpayer will have to make a decision as to whether the appeal is to be withdrawn and the issue pursued under the Mutual Agreement/Arbitration Convention Procedure or is dealt with under the appeal procedure.</p> <p>The competent authorities will not be in a position to set up an advisory commission unless the taxpayer concerned has withdrawn any appeal against a matter to be dealt with by that commission</p>
Latvia	Latvia stops the negotiations in such situation because there is no possibility to change the decision of judicial body.
Lithuania	No experience
Luxembourg	
Malta	<p>If the case is under objection but has not proceeded to a judicial body, negotiations with the other Member State may continue, provided the other Member State agrees.</p> <p>If the case is under review by a judicial body, then the taxpayer will need to decide whether to continue under the Mutual Agreement Procedure or the domestic procedure. If the tax payer opts for the latter, all negotiations with the other Member State will cease.</p>
Netherlands	NA
Poland	the negotiations will be stopped
Portugal	Although no case of application of Art. 7 (3) is so far known to us, it is admissible that in practice the Tax Administration may opt for the suspension of negotiations with the competent authorities of the other Member State if a taxpayer has a pending judicial appeal on the issue under consideration and has no intention to withdraw his appeal
Romania	No experience yet. Still it can be mentioned that a court decision is mandatory
Slovak Republic	<p>If the taxpayer believes, that the decision of the tax administrative bodies resulted in taxation, which is not in line with the law, he may (does not have to) take legal action/complain.</p> <p>In case the taxpayer, who took legal action, decides the same matter to be resolved under the mutual agreement procedure between the competent authorities under the Arbitration Convention, he should take this complaint</p>

<sup>1</sup> If the decision is in favour of the taxpayer, there will be no double taxation any more.

	back before the delivery of a judgement. Going on in negotiations under the MAP would be superfluous, because the agreement reached by the competent authorities would not be applied, if it derogated from the court decision
Slovenia	Slovenia did not have any cases under the Arbitration Convention yet. This means that there is not a lot of experience in this field. In general the taxpayer would have to decide whether to continue reaching an agreement under MAP or under domestic judicial appeal
Spain	As long as there is no judicial decision, both MAP and judicial procedure can continue at the same time. Once an agreement is reached within a MAP, Spanish competent authorities will inform the taxpayer and he will have the choice to see the agreement implemented or to continue with its judicial appeals
Sweden	NA
United Kingdom	NA



## Answers to question 5

In general it may be useful to learn about any experience with the application of art 7(3). Where it is not yet covered by your answers to the previous questions could you describe your national experiences?

Member State	Question 5
Austria	
Belgium	
Bulgaria	No experience
Cyprus	No experience
Czech Republic	
Denmark	NA
Estonia	No experience
Finland	NA
France	La France a été conduite en 2003 et 2005 à mettre en place avec l'Italie puis l'Allemagne une commission consultative sur des situations de double imposition en matière de prix de transfert entre entreprises associées. Préalablement, les entreprises concernées avaient été amenées à se désister de tout recours contentieux tendant à contester les redressements qui généraient la double imposition
Germany	<p>In general it may be useful to learn about any experience with the application of art 7(3). Where it is not yet covered by your answers to the previous questions could you describe your national experiences?</p> <p>The majority of German arbitration cases, which are based on a German correction, are not brought before the court in Germany. In general, an objection is submitted and suspension of enforcement granted. After that, the case is conducted within the framework of the Arbitration Convention.</p> <p>Where it comes to court proceedings, the following applies:</p> <ul style="list-style-type: none"> <li>• The court proceedings do not halt negotiations with the other Member State. Instead, it is far more common for the proceedings to be suspended with the consent of the taxable person and of the court.</li> <li>• In cases where taxable persons prefer first to pursue the legal proceedings pending in Germany, the mutual agreement procedure is suspended until the lawsuit has been dealt with.</li> </ul> <p>In practice, Germany then ensures that pending appeals procedures (objection/lawsuit) are settled, inter alia, through the (where appropriate, partial) withdrawal of the objection/lawsuit, prior to the implementation of a mutual agreement understanding through a tax assessment notice. Where no appeals procedure is pending, the revenue authorities ensure that applicants abstain from the submission of an appeal, insofar as the results of the mutual agreement understanding are implemented appropriately through the notice.</p>

	Where a case is taken to court in a foreign country unable to derogate from its decisions, Germany conducts a mutual agreement procedure pursuant to Article 6 of the Arbitration Convention. Germany does, however, take the view that the advisory commission may not be convened as long as the case is pending before the court abroad
Greece	Since, Greece has no practical experience on the operation of the Arbitration Convention, regarding the application of Art. 7 (3), we can not give answers to questions 4 and 5 of the questionnaire at this stage. But, we would like inform you that a question regarding this matter is forwarded to the <b>Legal Council of the State</b> , in order to provide JTPF with our fully formal position
Hungary	As to our experiences on national level, if the tax office faces a final judicial decision in course its process, the tax office must finish the process as soon as possible without further investigation
Italy	It could be useful to learn about the experience or the position (if it is too early to talk of experience, taking into account the recent entry into force of the Prolongation Protocol) of countries applying article 7, paragraph 3 with reference to the computation of the two-years period, in the case where the taxpayer withdraws the appeal before a decision has been delivered. Should the taxpayer withdraw the appeal before a decision has been delivered, if no mutual agreement has been reached between the competent authorities, it is possible to start the arbitration stage. But how shall the two-years period be computed? According to article 7, paragraph 1, 2 <sup>nd</sup> indent, read in conjunction with paragraph 3 of the same article 7, it can be assumed that the two-years time limit starts from the date when the taxpayer withdraws the first-instance appeal. It could be useful to learn whether this position is shared by all countries applying article 7, paragraph 3.
Ireland	No experience
Latvia	
Lithuania	No experience
Luxembourg	
Malta	No experience
Netherlands	No experience
Poland	No experience According Polish rules, the tax administration can not derogate from decision of Polish judicial bodies concerning administrative decision based on given state of affairs. It means, that due to Polish provisions regulating procedure before administrative courts, the legally valid judicial decision (final decision) is obliging to the tax administration involved in individual case. Judicial decision is final when the appeal is not allowed.
Portugal	No experience
Romania	No experience
Slovak Republic	No experience
Slovenia	On national level we would like to note that the Arbitration Convention was

	<p>set into force on 24 October 2007 when it was passed through by the Parliament. We do not have much experience in the filed of the application of Art.7(3).</p> <p>In general when inspecting a taxpayer the procedure is as follows: After the tax inspection the tax inspector issues a provision. The taxpayer can file an appeal to the governmental body in this case, to the Ministry of Finance. If not satisfied with the outcome the taxpayer can than make a complain to the administrative (higher) court. Regardless to the complain the taxpayer is obliged to pay the penalties and late interests stated in the provision. If the penalties and late interests are in the course of appeal proven to be wrong they will be returned to the taxpayer</p>
Spain	/
Sweden	<p>In Sweden we have traditionally taken the below described approach, but this is not something that follows from the law. It is just a practise that the competent authority (the Ministry of Finance and the Swedish Tax Agency) adhere to. From a formal point of view a case can be tried simultaneously by both a Court and the competent authority. However, from a practical point of view in most cases we have chosen not to do so. Instead, as competent authority we normally choose to have our case rest and wait for the court(s) to decide its case. There is nothing in Swedish law or practise that suggests that a court should rest its case only because a mutual agreement procedure has been initiated.</p> <p>There are two reasons for this practise. First of all, a taxpayer always has the right to go to court. If he has also chosen to initiate a mutual agreement procedure he still has the right under Swedish law to have his case tried by a court. If he wins his case in a court there will be no double taxation to eliminate. If we and the other competent authority have spent a lot of time on the case this will of course be wasted. In such a situation we believe it is better to spend our resources on other cases.</p> <p>The second reason is that the mutual agreement procedure under a tax agreement is intended to be an extra ordinary or last resort in order to eliminate double taxation that can not be avoided in the regular procedures. The intention is not for the mutual agreement procedure to replace existing and regular procedures. It is also our experience as competent authority that it is easier to handle a case if at least one court has already tried it. The case is often better analysed in such a situation. But of course, it is always up to the taxpayer to decide whether he wants to go to court or not</p>
United Kingdom	NA