

UNOFFICIAL TRANSLATION



The Republic of Serbia
THE MINISTRY OF FINANCE
No: 430-01-229/2019-04
30 November, 2020
20, Kneza Milosa St.
Belgrade

Pursuant to Article 23, paragraph 2 of the Law on State Administration ("Official Gazette of RS", No. 79/05, 101/07, 95/10, 99/14, 47/18 and 30/18-dr. the law),

The Minister of Finance brings

EXPLANATION **on the Mutual agreement procedure** **under international treaties for the avoidance of double** **taxation**

UNOFFICIAL TRANSLATION

Table of contents

1. INTRODUCTION	3
1.1. General on the mutual agreement procedure	3
1.2. Legal basis	3
1.3. Content of provisions on the mutual agreement procedure	4
1.4. The content and purpose of the mutual agreement procedure by competent authorities	5
1.5. Competent authority	5
2. MUTUAL AGREEMENT PROCEDURE UNDER INTERNATIONAL TREATIES FOR THE AVOIDANCE OF DOUBLE TAXATION	6
2.1. A request to initiate a mutual agreement procedure	6
2.1.1. Persons eligible to submit a request	6
2.1.2. Where to submit a request	6
2.1.3. Time limit for submitting a request	7
2.1.4. Admissibility of the request	8
2.1.5. Methods for submitting a request	9
2.1.6. Content of a request	9
2.2. Procedure after submitting a request	10
2.2.1. Test of the request	10
2.2.2. Mutual notification and consultation procedure with another competent authority	11
2.2.3. Start of the procedure	11
2.2.3.1. Tax collection in the event of the procedure being initiated	11
2.2.3.2. Conduct of the procedure	11
2.2.4. Interaction between the mutual agreement procedure and the use of domestic legal remedies	12
2.3. Application of the mutual agreement procedure	12
2.4. Implementation of a mutual agreement	13

UNOFFICIAL TRANSLATION

1. INTRODUCTION

1.1. General on the mutual agreement procedure

This document describes a mutual agreement procedure under conventions/agreements for the avoidance of double taxation with respect to taxes on income/and on capital concluded by the Republic of Serbia (hereinafter: international treaties for the avoidance of double taxation).

The mutual agreement procedure under international treaties for the avoidance of double taxation is an international procedure for ensuring the uniform implementation of those treaties. Such a procedure is therefore not a procedure governed by the domestic law of a Contracting State, but a specific instrument for settling international tax disputes.

The Organisation for Economic Cooperation and Development (hereinafter: OECD), of which the Republic of Serbia is not a member, has published the Manual on Effective Mutual Agreement Procedures (MEMAP). The aim of publishing a manual outlining best practices in this field is to promote awareness of the functioning of mutual agreement procedures. The manual is published on the OECD's website (<http://www.oecd.org>).

Chapter IV of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (hereinafter: OECD Transfer Pricing Guidelines) also contains a specific section on the appropriate adjustments and mutual agreement procedures.¹ In July 2017 the OECD Transfer Pricing Guidelines were updated with a new edition that reflects the clarifications and revisions agreed in the BEPS Reports („Base Erosion and Profit Shifting”)².

1.2. Legal basis

The mutual agreement procedure is governed by the provisions of an applicable international treaty for the avoidance of double taxation (usually, Article 25 - Mutual Agreement Procedure).

According to the provisions of a given international treaty for the avoidance of double taxation, the competent authority in the Republic of Serbia (hereinafter: Serbia) may communicate directly with the competent authority of the other Contracting State in order to reach an agreement on taxation in Serbia or in another Contracting State, and this may be an agreement in individual cases or also an agreement on general issues (more on this can be found under section 1.3.).

Information on the conduct of mutual agreement procedures in Serbia is also published in the collection of MAP ("mutual agreement procedure - MAP") profiles of countries on the OECD website: <http://www.oecd.org/tax/beps/country-map-profiles.htm>

¹ Serbian translation of the Guidelines (edition 2010) is published by the Serbian Fiscal Society (Belgrade, 2011).

² New (2017) edition of the OECD Transfer Pricing Guidelines is available on the OECD's website:

<http://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm>

UNOFFICIAL TRANSLATION

1.3. Content of provisions on the mutual agreement procedure

The provisions of international treaties for the avoidance of double taxation governing the mutual agreement procedure include, with some exceptions, the following types of procedures³:

- mutual agreement procedure in individual cases that may be initiated at the request of a person, whereby that person shows that the actions of one or both Contracting States have resulted or will result in taxation for that person which is not in accordance with the provisions of the applicable international treaty;
- mutual agreement procedure on general issues for dealing with difficulties or doubts in the interpretation or application of international treaties;
- mutual agreement procedure on the elimination of double taxation in cases not provided for in an applicable international treaty⁴.

³ Article 25 of the Model Tax Convention on Income and on Capital of the OECD in the 2017 edition (hereinafter: The OECD Model Tax Convention) stipulates:

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either* Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

***Note: Pursuant to Commentary on Article 25 paragraph 1 of the OECD Model Tax Convention, Serbia reserved the right to keep the provision as it read in the 2014 edition of the OECD Model Tax Convention.**

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

**5. Where,

- a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and
- b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

****Note: Pursuant to its position on Article 25 paragraph 5 of the OECD Model Tax Convention, Serbia reserve the right not to include paragraph 5 in its international treaties for the avoidance of double taxation.**

⁴ For example, in a case where a resident of a third country has a permanent establishment in both Contracting States and the Contracting States do not agree on the amount of profit attributable to each of these permanent establishments.

UNOFFICIAL TRANSLATION

The mutual agreement procedures referred to in the second and third indents of the preceding paragraph are initiated at the request of a competent authority. Generally, mutual agreements reached in procedures under the second indent affect a large number of taxable persons.

This document describes in more detail a mutual agreement procedure from the first indent of paragraph one of this section (1.3.).

The provisions of international treaties for the avoidance of double taxation governing the mutual agreement procedure do not provide for the obligation of competent authorities to reach a solution (agreement) in every case. The competent authorities are obliged only to endeavour to resolve the case by mutual agreement. However, this does not mean that such an agreement can be reached in every case.

1.4. The content and purpose of the mutual agreement procedure by competent authorities

The content of a mutual agreement procedure as an intergovernmental procedure is considering a request by one of the Contracting States, made on the basis of an international treaty for the avoidance of double taxation, relating to the tax treatment of a person subject to the provisions of the international treaty.

The purpose of the mutual agreement procedure by competent authorities is to enable a person to whom the provisions of an international treaty for the avoidance of double taxation apply, to exercise their right, under that treaty within the framework of the legal systems of the Contracting States.

1.5. Competent authority

In Serbia, the Ministry of Finance is responsible for providing mutual agreement procedure assistance under international treaties for the avoidance of double taxation concluded by Serbia. This assistance is provided free of charge.

The list of countries (including texts of the treaties - in Serbian) with which Serbia has concluded international treaties for the avoidance of double taxation is published at the following website:
<https://www.mfin.gov.rs/propisi/ugovori-o-izbegavanju-dvostrukog-oporezivanja/>

The mutual agreement procedure under international treaties for the avoidance of double taxation is an international procedure between the competent authorities of both Contracting States. Therefore, as stated below, taxable persons do not participate in the actual process of mutual agreement procedure between the competent authorities, even if the procedure begins at their request. However, they are expected to cooperate promptly and responsively with the competent authority for the duration of the mutual agreement procedure.

Information exchanged in the mutual agreement procedure is subject to tax secrecy, as defined in applicable international treaties for the avoidance of double taxation.

UNOFFICIAL TRANSLATION

2. MUTUAL AGREEMENT PROCEDURE UNDER INTERNATIONAL TREATIES FOR THE AVOIDANCE OF DOUBLE TAXATION

2.1. *A request to initiate a mutual agreement procedure*

2.1.1. Persons eligible to submit a request

A request for the initiation of the mutual agreement procedure can be submitted by a person to whom the provisions of an applicable international treaty for the avoidance of double taxation apply.

2.1.2. Where to submit a request

A request shall be submitted to the competent authority of the State of residence of the person for whom the provisions of an applicable international treaty for the avoidance of double taxation apply. In Serbia, written requests for assistance through mutual agreement procedures under international treaties for the avoidance of double taxation are sent directly to the competent authority at the following address:

Ministry of Finance
Fiscal System Department
20, Kneza Milosa str.
11000 Belgrade
Phone: +381 11 3642 851
Email: fiskalni.sektor@mfin.gov.rs
www.mfin.gov.rs

In a case of the enforcement of protection under paragraph one of the article of an international treaty for the avoidance of double taxation, which governs non-discrimination, the request shall be filed with the competent authority of the State of nationality of the person who claims benefits from an applicable international treaty, unless otherwise stipulated in the international treaty.

A taxable person who changes his resident status (becomes a resident of another Contracting State and ceases to be a resident of Serbia) after the occurrence of an action which has resulted in, or could result in, taxation which is not in accordance with the provisions of an international treaty for the avoidance of double taxation, shall submit a request with the competent authority of the State of which that person was a resident at the time when the relevant tax which, as a result of such an action was (or would have been) calculated or assessed.

In the case of dual residence, a request is submitted in the Contracting State in which a person considers to be a resident. Thus, a resident of Serbia who is also a resident of another Contracting State and considers that, under the provisions of an international treaty for the avoidance of double taxation, he is a tax resident only of that other Contracting State, must request the mutual agreement procedure assistance concerning his tax residence under the provisions of an international treaty at the competent authority of the other Contracting State.

UNOFFICIAL TRANSLATION

2.1.3. Time limit for submitting a request

A request must be submitted as soon as possible after the first notification of the action in Serbia or another Contracting State resulting in taxation not in accordance with the provisions of an international treaty for the avoidance of double taxation.

The time limits for submitting a request are laid down in international treaties for the avoidance of double taxation (i.e. in an article governing the mutual agreement procedure).

If an applicable international treaty for the avoidance of double taxation does not specify the time limit and it does not stipulate that any agreement reached is implemented regardless of the time limits in the domestic legislation of Contracting States, the competent authority in Serbia takes into account the statute of limitation pursuant to Article 114a - 114z of the Law on Tax Procedure and Tax Administration, where double taxation or taxation not in accordance with the provisions of the international treaty for the avoidance of double taxation is to be eliminated in Serbia.

If double taxation or taxation not in accordance with the provisions of an applicable international treaty for the avoidance of double taxation is to be eliminated in the other Contracting State and an international treaty does not specify that any agreement reached is to be implemented regardless of the time limits laid down in the domestic legislation of Contracting States, it is necessary upon the submission of the request to also take into account whether it would be possible to implement the mutual agreement in the other Contracting State at that time.

The following text, „as soon as possible after the first notification of the action resulting in taxation not in accordance with the provisions of the international treaty”, is interpreted in the manner that is most favourable for the taxable person. This means that, taking into account the domestic tax procedure legislation, the time limit for submitting a request normally starts to run:

- if tax was calculated in a withholding tax return, on the day on which withholding tax was calculated, deducted and paid;
- if tax was calculated in a tax return, on the day the tax return was submitted to the tax authority;
- if tax was determined with a notice of tax assessment, on the day on which the notice was served to the taxable person.

This also means that when such taxation arises from profit adjustments made by the tax authority (for example, in tax audits), the time limit for submitting a request in such cases shall start running no later than from the date on which a taxable person is served the notice of tax assessment.

A request for the initiation of the mutual agreement procedure may be submitted irrespective of the fact that the appeal procedure has not yet been completed or that legal remedies under Serbian legislation or the legislation of the other Contracting State have not yet been exhausted. However, it is necessary to take into account the fact that under the domestic law of certain Contracting States it is not possible to implement an agreement with the content different from the domestic court decision.

Exceptionally, however, a request may be submitted even if a Contracting State has not yet taken an action which would result in taxation which is not in accordance with the provisions of an

UNOFFICIAL TRANSLATION

international treaty for the avoidance of double taxation, but it is particularly likely that it will do so (e.g. if the tax authority has adopted a binding tax ruling on the tax treatment of the intended activity, or before the completion of the tax audit or the delivery of the notice of tax assessment if the tax authority has announced certain tax measures during the period of tax audit in its tax audit report). It should be emphasized, however, that the competent authority in such a case has to wait until the completion of tax audit (i.e. the delivery of the notice of tax assessment) before it starts resolving the case.

2.1.4. Admissibility of the request

A request for the initiation of the mutual agreement procedure is admissible if it is clear from the request that the actions of one or both of the Contracting States have resulted in, or will result in, taxation which is not in accordance with the provisions of an international treaty for the avoidance of double taxation.

In the case of companies, these are usually cases of transfer pricing (i.e. cases where the tax authorities of one or more States adjust the income of companies that are part of multinational groups from transactions within the group - examples of corresponding adjustments of profit) and other cases (e.g. the existence of a permanent establishment, the attribution of profit to a permanent establishment, the definition of income as a business profit or as income under other articles of an international treaty, the use of tax rates under an international treaty). In the case of individuals, these are usually cases of dual residence (where a person is considered a resident of two Contracting States because that person meets the conditions for the status of a resident under the tax laws of both States and is taxed as a resident in both States), the inappropriate use of withholding tax on dividends, interest, royalties and fees for independent work, taxation of income from employment and pensions.

Below are some other general cases of taxation that is not in accordance with the provisions of an international treaty for the avoidance of double taxation:

- income not subject to taxation under an international treaty (or subject to only partial taxation) in another Contracting State is taxed in that State (in full or over the amount permitted by the international treaty);
- a tax payer who is subject to income tax, including income from business activities, in the Contracting State of which he is a resident, is taxed in the other Contracting State on the income from business activity derived in that other State, even though he does not have a fixed base/permanent establishment in that other State;
- double taxation is the result of a different definition of income under an international treaty in the Contracting States;
- taxation in another Contracting State is contrary to the prohibition of discrimination under an international treaty.

If double taxation resulted due to non-compliance with the rules of the tax procedure, this is not taxation that is not in accordance with the provisions of an applicable international treaty on the avoidance of double taxation. This means that it is not possible to submit a request for the initiation of the mutual agreement procedure in the case of double taxation arising from not claiming benefits under an international treaty in another Contracting State - the State of source of income, as

UNOFFICIAL TRANSLATION

stipulated by the rules of the tax procedure in that other State. Namely, the mutual agreement procedure does not replace the procedure for reducing or refunding the withholding tax/tax in another Contracting State. A request for the mutual agreement procedure may be submitted only if a request for such a reduction or a refund of tax has been rejected in the other Contracting State.

2.1.5. Methods for submitting a request

A request is submitted in written form to the address given in section 2.1.2. of this document. In the case of more extensive documentation, especially in cases of profit adjustments related to transfer prices, it is possible and advisable to submit supporting documentation as an appendix to a written request in written form too.

A request, including enclosed documents are submitted in the Serbian language. Due to the international nature of the procedure and in order to speed up the conduct of the procedure and communication with the competent authorities of other States, it is desirable for a taxable person to also submit a request in English. In the case of the enclosed copies of documents in a foreign language other than English, translations of documents (to English and Serbian) must be enclosed with the request. The translation of the request and the attached documentation should be certified by an authorized person.

2.1.6. Content of a request

It should be emphasised that the speed of resolving a particular case in the mutual agreement procedure depends *inter alia* on the content of the request and the enclosed documentation. A complete request allows for cases to be considered more speedily.

A request shall contain the following documentation:

- a) name, address(es), tax number(s) and other information needed to identify the person in question who submitted the request to the competent authority and of any other persons concerned;
- b) the tax periods concerned;
- c) details of the facts taken into account and the circumstances of the case (including details of the structure of the transaction and the relations between the person concerned and other parties to the transactions in question,) and, more precisely, of the nature and the date of the measures giving rise to the dispute (including, where necessary, details of the same income received in another State and of the inclusion of such income in taxable income in another State, and of tax which has been, or will be, calculated in respect of such income in another State) and the related amounts in the currencies of the States concerned, including copies of any supporting documents;
- d) reference to the applicable national regulations and an international agreement. When more than one international agreement applies, the person submitting the request shall specify which international agreement is being interpreted in relation to the relevant question in dispute;
- e) the following information provided by the person in question who submitted a request with the competent authority, including the copies of any supporting documents:

UNOFFICIAL TRANSLATION

- an explanation of why the person in question thinks that there is a dispute;
- details of any appeals and legal proceedings initiated by the person concerned in relation to the transactions in question and of any judicial decisions affecting the question in dispute;
- a signed statement by the person concerned to the effect that all the information in the submitted documentation is true and that they will respond to all relevant requests from the competent authorities as fully and as soon as possible and submit all documentation at the request of the competent authorities;
- a copy of the final notice of tax assessment in the form of a final notification of tax assessment, a report of a tax audit or another equivalent document justifying the question in dispute, and copies of other documents issued by the tax authorities on the question in dispute, when applicable;
- information on any claims submitted by the person concerned in the context of another mutual agreement procedure or dispute resolution procedure;
- information on whether the competent authority has already dealt with the matter on which the request is submitted;
- information on whether the person concerned has submitted a request also with the competent authority of the other State;

In addition, the request must also include:

- contact phone number;
- when a person is represented by an authorised representative in the procedure, an appropriate authorisation must be enclosed with the request;
- the indication of the competent tax authority (tax office) of the person concerned to whom the international treaty applies and the relevant foreign competent tax authority (tax office);
- other information that would, according to the taxable person, be relevant for resolving the case.

The person submitting a request to initiate the procedure must also promptly notify the competent authority of any changes related to the content of the request.

2.2. Procedure after submitting a request

2.2.1. Test of the request

When a request is submitted, the competent authority verifies that the formal conditions for initiating the procedure are met, in particular whether a request has been submitted within the prescribed time limit and whether it has been submitted by an eligible person.

The competent authority then verifies whether the request is complete, i.e. whether the person has

UNOFFICIAL TRANSLATION

submitted all the elements of the request, referred to in section 2.1.6. of this document. If certain elements of the request are lacking or additional information or documentation is required, the competent authority invites the person to complete it, generally within three months from the receipt of the request. If the person who submitted the request to initiate the mutual agreement procedure cannot submit additional information or documentation within the time limit specified in the invitation for substantive reasons, the person may notify the competent authority of the reasons and ask for an extension of the time limit. If, even after an additional time limit, the person does not submit the requested documentation or does not cooperate with the competent authority, the competent authority may reject the request for the initiation of the mutual agreement procedure with an official notice (e.g. on the basis of received information or documentation the competent authority cannot verify whether the objection in the request is justified). In this case, the competent authority also carries out the notification or consultation procedure with the other competent authority as described in section 2.2.2. of this document.

If the competent authority on the basis of a complete request finds that in a particular case the actions of one or both Contracting States have not or will not result in taxation for the taxable person which is not in accordance with the provisions of an international treaty, it generally rejects the request for the initiation of the mutual agreement procedure within two months of receiving the complete request with an official notice. In such a case, the competent authority also carries out the notification or consultation procedure with the other competent authority in section 2.2.2. of this document.

2.2.2. Mutual notification and consultation procedure with another competent authority

When the request is submitted only to the competent authority of Serbia, which finds that the conditions for initiating the procedure are not met, or when it rejects the request for the initiation of the mutual agreement procedure with an official notice for other reasons listed under section 2.2.1., it informs the competent authority of the other State of this by letter, generally within two months from the date when the taxable person is notified of the rejection. The competent authority may also consult with the other competent authority before it rejects the request.

2.2.3. Start of the procedure

2.2.3.1. Tax collection in the event of the procedure being initiated

The submission of a request to initiate the mutual agreement procedure does not terminate the tax procedure.

The submission of a request to initiate the mutual agreement procedure does not suspend the implementation of the notice of assessment. However, a taxable person/tax payer who submits a request to initiate the mutual agreement procedure can avail themselves of all the usual institutes that allow for different ways of determining the payment of a tax liability (for example, Articles 73 to 74 of the Law on Tax Procedure and Tax Administration).

2.2.3.2. Conduct of the procedure

If, on the basis of the information received and a detailed examination of the case, the competent authority assesses that the substantive conditions to start the mutual agreement procedure are met, the content of the request submitted by the person to whom the international treaty applies can be

UNOFFICIAL TRANSLATION

resolved (unilaterally) by using the appropriate legal remedies under Serbian legislation when this is possible in an individual case. If necessary, the Serbian competent authority exchanges views and information on the case with the competent authority of the other Contracting State in order to confirm a certain interpretation of the international treaty for the avoidance of double taxation.

If the content of the request cannot be resolved unilaterally by using appropriate legal remedies under Serbian legislation, the competent authority starts the bilateral phase of the mutual agreement procedure with the competent authority of the other Contracting State. Generally, the competent authority notifies the person submitting the request on the start of the bilateral phase of the procedure within two months of the receipt of the complete request.

When the mutual agreement procedure has begun at the initiative of the competent authority of the other Contracting State and the case also relates to taxable persons in Serbia (for example, cases under the provision of the international treaty for the avoidance of double taxation on associated enterprises or on residence), the competent authority in Serbia informs the taxable person in Serbia to whom the procedure relates, generally within two months, if he has not yet been informed of the case. The taxable person is obliged to cooperate with the competent authority in such cases. If necessary, the competent authority in Serbia may request that a taxable person submit additional information or documentation.

2.2.4. Interaction between the mutual agreement procedure and the use of domestic legal remedies

Pursuant to Article 16 of the Constitution of the Republic of Serbia, ratified international agreements and generally adopted rules of the international law are part of the legal system of the Republic of Serbia and have direct application.*

***Note: Solutions in the international treaties for the avoidance of double taxation have priority over the solutions in the tax and other laws of the Republic of Serbia.**

2.3. Application of the mutual agreement procedure

The mutual agreement procedure takes place directly between the competent authorities of both Contracting States in accordance with international practice. Since the content of such an international procedure is of a consultative nature, taxable persons - even if the procedure is initiated at their request - do not participate in the course of the agreement between the competent authorities (i.e. they are neither „participants” nor „attendees” in those proceedings). They are only informed of the result of the procedure. In certain exceptional cases, where complex facts and circumstances of the case need to be additionally clarified, the taxable person may be called upon to present the case before the competent authorities with a view to achieving a harmonised understanding of the case, which does not mean that the taxable person then participates in discussions between the competent authorities.

In order to clarify the circumstances and to reach an agreement, the competent authorities may exchange opinions directly, including through a special committee which they set up and which consists of representatives of both competent authorities for the purpose of such an exchange of views. In practice, opinions are usually exchanged in writing (usually in English).

The speed of the procedure depends on the circumstances of each individual case. When the actual circumstances of the case need to be additionally clarified in the procedure, the person who

UNOFFICIAL TRANSLATION

submitted the request for the initiation of the mutual agreement procedure must cooperate proactively, transparently and in good faith with the competent authority and provide the required information and documentation. It is particularly important that the competent authorities do not receive contradictory information (for example, from a taxable person and a related person in another country), as this can significantly slow down the process. The documentation submitted by a taxable person or a related person in the procedure must therefore be carefully examined for accuracy and consistency. Non-cooperation may lead to the competent authority in Serbia being unable to provide assistance in the mutual agreement procedure, as explained in section 2.2.1. of this document, and as a consequence, this may result in failure to achieve a mutual agreement between the competent authorities on the elimination of double taxation or taxation not in accordance with the international treaty for the avoidance of double taxation in the discussed case. The competent authority in the procedure also obtains the results of an investigation into the facts and circumstances in the other Contracting State. Any discrepancies between the competent authorities regarding the definition of the circumstances of the case can be clarified in the course of discussions.

The competent authority generally informs the person who submitted a request about the status and progress of the case by phone, if possible.

The information exchanged in the mutual agreement procedure is protected, as defined in an applicable international treaty for the avoidance of double taxation (generally, in Article 26 - Exchange of Information). The information exchanged in the mutual agreement procedure is thus protected as a tax secret in accordance with Article 7 of the Law on Tax Procedure and Tax Administration.

Taking into account the stated nature of the mutual agreement procedure and the international practice summarised in the Manual on Effective Mutual Agreement Procedure - MEMAP, in the case of mutual agreement procedures under international treaties, documents that are exchanged between the competent authorities of both Contracting States in connection with the mutual agreement procedure are not disclosed to taxable persons.

If the competent authorities of the Contracting States fail to agree in the mutual agreement procedure, the competent authority informs the person who submitted the request of this. It has to be noted that mutual agreement procedures can in certain special cases take a longer period to be resolved.

2.4. Implementation of a mutual agreement

Generally, any agreement reached in the mutual agreement procedure is implemented notwithstanding any time limits in the domestic law of the Contracting States.

An exception applies according to certain international treaties for the avoidance of double taxation if, in the article governing the mutual agreement procedure, there is no specific provision that any agreement reached is to be implemented irrespective of the time limits in the domestic law of the Contracting States. This means that, in Serbia, the statute of limitation referred to in Article 114a to 114z of the Law on Tax Procedure and Tax Administration (or statutes of limitation in another Contracting State - in the case of implementation in another Contracting State) must be taken into account in the implementation of a mutual agreement under these international treaties.

UNOFFICIAL TRANSLATION

As soon as the competent authorities of the Contracting States reach an agreement in the mutual agreement procedure, the competent authority which initiated the procedure informs the person submitting a request on the content of the agreement, generally within two months after the agreement is concluded. In the case of the mutual agreement procedure for the purpose of the adjustment of profit related to transfer prices, the competent authority in Serbia notifies the resident of Serbia to whom the procedure applies on the content of the agreement, generally within two months after the agreement is concluded, even if the procedure was initiated by the competent authority of the other Contracting State upon the request of its resident.

A taxable person cannot request from the tax authority that the decision that was made in the mutual agreement procedure be implemented only in part and not in its entirety.

MINISTER

 Sinisa Mali