



BRUSSELS | 1 JULY 2019



## EU Tax Dispute Resolution Directive Enters Into Force

The [Council Directive on tax dispute resolution mechanisms](#) in the European Union entered into force today 1 July. It shall apply to complaints submitted from 1 July 2019 onwards on disputes relating to income or capital concerning the tax year commencing on or after 1 January 2018. The Directive will significantly improve the tax dispute resolution process; alleviate instances of double taxation and provide for binding dispute resolution process with improved tax certainty for taxpayers. CFE [has welcomed](#) the developments with this Directive and will soon publish a statement highlighting the elements of the Directive that merit further consideration, for the benefit of the taxpayers and efficiency of the process.

The Directive enacts an enforceable obligation on Member States to arrive at a resolution of all disputes within the scope of the directive, within two years in the process of a tax treaty dispute. Member States will constitute an Advisory Commission to arbitrate if at the end of this period the dispute has not been resolved. If Member States fail to do so, the taxpayer can bring an action before the national courts to unblock the process. This Advisory Commission will have six months to deliver a final, binding decision. This decision will be immediately enforceable and must resolve the dispute. The Directive envisages significant transparency improvements, with an obligation to notify the taxpayers and publish abstracts of the final decisions.

The EU Commissioner for Taxation, Pierre Moscovici, said: *“A fair and efficient tax system in the EU should also ensure that the same revenue is not taxed twice by two different Member States. When that happens, the problem should be solved swiftly and efficiently. From today, resolving tax disputes will be a lot easier. Companies, in particular small businesses, and individuals that may be experiencing cash flow problems as a result of double taxation will see their rights considerably enhanced. They can now be more certain that their tax matters will be resolved by the relevant judicial authorities in an acceptable and predictable timeframe, instead of dragging on for years.”*



## Commission Appeals General Court Decision in Belgian ‘Excess Profit’ Scheme State Aid Cases

Appeal documents concerning the decision of the General Court to annul the Commission’s decision in the Belgian ‘excess profit’ State aid cases have recently been [published](#). The Commission has now launched an appeal against the General Court’s judgment which

annulled the Commission's decision in the cases. The Commission argues that the Court incorrectly classified the "excess profit" tax ruling practice as a scheme under Article 1(d) of Regulation 2015/1589, and misinterpreted the first, second and third condition of Article 1(d) in its decision.

The decision in the Belgian excess profit rulings cases ([Cases T-131/16 and T-263/16 Kingdom of Belgium v European Commission](#)) was a highly anticipated decision considering that the Court for the first time had an opportunity to interpret the Commission's understanding of the arm's length principle under EU State aid law and the competence of the Commission to assess individual tax rulings. The decision did not invalidate Commission's substantive interpretation of the State aid rules, but challenged the methodology of assessment and the classification of the aid as a "scheme".

The [original Commission decision](#) established that the Belgian "excess profit" tax scheme had allowed multiple European MNEs in Belgium to benefit from a corporate tax base reduction for the generated excess profits. Commission's State aid investigation found that Belgium had established an "aid scheme", derogating from Belgian tax law and the "arm's length principle" as interpreted by the European Commission. The "excess profit" scheme was marketed by the Belgian government under the strapline "Only in Belgium".

The alleged error in law brought up by the Belgian government and the beneficiaries amounted to competence issues and methodology- related arguments. Belgium challenged European Commission competence to assess the State aid compliance of administrative measures in the direct tax area (tax rulings), invoking national sovereignty prerogative and methodological arguments related to the assessment of the alleged aid as an "aid scheme". The General Court dismissed the first plea, reaffirming Commission's competence to assess the State aid compliance of national direct tax measures, including administrative decisions such as tax rulings. The Court noted that while direct taxation, as EU law currently stands, falls within the competence of the Member States, they must nonetheless exercise that competence consistently with EU law, in particular primary EU law (fundamental freedoms and State aid rules). Accepting the second plea, the Court disagreed with the Commission's assessment that the tax rulings constituted an "aid scheme". Significantly, the Belgian tax authorities had influence over the essential elements of the tax rulings system, which precludes the existence of an aid scheme. Further, it was established that the [Procedural Regulation](#) (EU/2015/1589) defines aid beneficiaries "in a general and abstract manner" for an infinite period of time, which was not the case with the Belgian "excess profit" rulings.

Further clarity on the matter will be offered in the appeal.



## OECD Publishes International Exchange Framework for Mandatory Disclosure Rules

On 27 June, the OECD released the [International Exchange Framework for Mandatory Disclosure Rules on CRS Avoidance Arrangements and Opaque Offshore Structures](#). The publication sets out an international framework to govern MDR exchanges, from a legal and an operational perspective.

The publication also contains a draft of the Multilateral Competent Authority Agreement (MCAA), which will enable jurisdictions that receive information about a CRS Avoidance

Arrangement or Opaque Offshore Structure under the MDRs to exchange such information with the relevant jurisdictions where the concerned taxpayers are residents.



## Netherlands to Create Multinational Taxation Commission

The Netherlands' State Secretary for Finance announced in a [letter](#) dated 25 June 2019, sent to the lower house of national parliament, that a Commission will be established in order to create an inventory of mechanisms in place concerning the Dutch corporate tax base.

The Commission will be made up of experts, including EU law, economic and tax specialists, as well as experts from within the Ministry of Finance. The Commission will also work to ensure the competitiveness of the Netherlands as a location for multinational headquarters.

The Commission will be required to report to the parliament every 6 months on its activities.



## Belgium and India Ratify OECD Multilateral BEPS Convention

On 25 June, Belgium and India deposited their instruments of ratification for the [OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting](#). The BEPS convention aims to combat tax avoidance by multinational enterprises (MNEs) through prevention of Base Erosion and Profit Shifting (BEPS).

On the same day, Morocco became the 89th jurisdiction to sign the [BEPS MLI Convention](#). The BEPS multilateral instrument was negotiated within the framework of the OECD G20 BEPS project and enables countries and jurisdictions to swiftly modify their bilateral tax treaties to implement some of the measures agreed.



---

The selection of the remitted material has been prepared by  
Piergiorgio Valente/ Aleksandar Ivanovski/ Brodie McIntosh/ Filipa Correia