MAP GUIDELINES, updated 2022

TITLE I
Guidelines for mutual agreement procedure in accordance with double taxation agreements

1. Introduction

The purpose of these guidelines is to set out the process through which taxpayers can request assistance from Competent Authority to resolve disputes arising from taxation not in accordance with the provisions of the relevant double taxation agreement ("DTA"). The procedure is described in the current Article 25 of the OECD Model Tax Convention[1] which prescribes that every Contracting State may appoint a representative, specified as a Competent Authority, which would help the taxpayers – residents to resolve disputes between tax jurisdictions. The Competent Authorities of the Contracting States are authorised, in accordance with the conditions set forth in the relevant DTA, to endeavour to resolve the dispute by mutual agreement procedure (MAP) with the purpose of avoiding double taxation which is not in accordance with the relevant DTA. The disputes concern double taxation (legal and economic) as well as the differences arising from interpreting and applying the agreement. Having in mind that the majority of double taxation is automatically resolved by virtue of agreements, credit or exemption methods, or allocation of taxing rights between Contracting States, the majority of MAPs relates to situations where taxing of natural or legal persons is not completely clear.

2. Competent Authority for dispute resolution in accordance with double taxation agreements

The Competent Authority in the Republic of Croatia to resolve disputes arising from taxation not in accordance with the provisions of the relevant DTA shall be the Ministry of Finance, Tax Administration.[2] The taxpayers may ask for MAP assistance in accordance with the conditions of the relevant DTA. MAP assistance is provided by Tax Administration – Central Office, DTA Department within the Legislation, Education and International Cooperation Division. Contact details for submitting a MAP request to the Tax Administration are included in Appendix 1 of this document.

3. Legal basis for a MAP request

Article 25 of the OECD Model Tax Convention on Income and on Capital ("OECD MTC") provides for a mechanism to resolve difficulties arising where the actions of one or both of the Contracting States result or will result in taxation of the taxpayer concerned which is not in accordance with the provisions of the agreement. Under the equivalent of Article 25(2) of the OECD MTC, within the relevant Croatian DTA, the Competent Authority will endeavour to resolve such cases by mutual agreement with the Competent Authority of the other Contracting State. In such a case the taxpayer may request assistance from the Competent Authority to resolve the question in dispute.

MAP request may also be submitted in the case of a "*bona fide*" foreign adjustment initiated by the taxpayer[3] in order for the Competent Authorities to settle the double taxation issue by agreement.

---

[1] OECD (2017), Model Tax Convention on Income and on Capital. Paris: OECD Publishing

[2] Specific Tax Administration employees are authorised representatives to act as Competent Authority in accordance with the conditions of Croatian DTAs. The role of the Competent Authority is carried out irrespective of the inspector's role with the Tax Administration.

[3] Foreign adjustment initiated by the taxpayer shall be the adjustment initiated by the taxpayer and allowed according to domestic regulations of the Contracting State. In this way, the taxpayer is allowed to correct the previously submitted tax return

In general, Croatian DTAs stipulate that the **taxpayers are obliged to refer to the Competent Authority of the country of residency** in order to ask for MAP assistance.

It should be noted that in June 2017, the Republic of Croatia was one of the countries that signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting[4] ("Official Gazette – International Agreements", no. 7/20, hereinafter: Multilateral Convention) as part of the OECD Action Plan on Base Erosion and Profit Shifting (BEPS). One of the provisions of the Multilateral Convention allows taxpayers to approach the Competent Authority of either jurisdiction to request MAP assistance under a DTA. However, the Republic of Croatia did not adopt this provision by ratifying the Multilateral Convention, that is, the Republic of Croatia has placed a reservation on this provision, which means that Croatia retains the right that taxpayers approach only the Competent Authority of the Contracting State of which they are residents in the cases where actions of one or both of the contracting jurisdictions result or will result in taxation of the taxpayers not in accordance with the provisions of the covered DTA. Therefore, taxpayers should consult the relevant DTA and the provisions of the Multilateral Convention (following ratification by both partners of the DTA) when making a MAP request.

In the case of transfer pricing, that is, when the Tax Administration carries out the adjustment of profits affecting associated enterprises across different jurisdictions, it is recommended that every taxpayer submits a separate MAP assistance request to the Competent Authority of the state of which he is a resident.

4. Making a MAP request

4.1. Valid MAP request under consideration of the Competent Authority in accordance with the DTA

In order to request MAP assistance, a taxpayer must submit the MAP request in writing to the Croatian Competent Authority, providing the required information, as specified in item 4.1.2 of this document, about the action that has resulted or will result in taxation not in accordance with the relevant DTA.

The MAP request must be submitted within the time limit specified in the applicable DTA (refer to item 4.1.1 below), and a valid MAP request has to contain information specified in item 4.1.2. below. Submitting a MAP request shall not be charged nor subject to any duties.

4.1.1. Time limit for making a MAP request

Time limit for making a MAP request under DTA is established by the provisions of a relevant DTA.

Generally, Croatian DTAs follow Article 25 of the OECD MTC and provide that a request for MAP must be submitted within 3 years from the first notification of the action resulting in taxation not in accordance with the agreement. However, some treaties provide for a different time limit (for example two years in the Agreement between Canada and the Republic of Croatia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, Agreement between the Government of the State of Qatar and the Government of the Republic of

---

in order to adjust (i) the price of the transaction between associated enterprises or (ii) profit attributable to permanent establishment. The purpose is to declare an amount which is, from the point of view of the taxpayer, in accordance with the arm's length principle. For that purpose, foreign adjustment initiated by the taxpayer will be deemed "*bona fide*" when it refers to the effort of the taxpayer to, in good faith, correctly declare the taxable profits generated in controlled transactions or profits attributable to permanent establishment, and when the taxpayers have duly and timely complied with their liabilities relating to taxable profit or profit attributable to permanent establishment in accordance with the regulations of the Contracting States.

[4] The purpose of the Multilateral Convention is to enable the modification of existing DTAs, in order to implement the DTA-related measures to combat aggressive tax planning that were agreed as part of the OECD/G20 BEPS project.

Croatia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, Agreement between the Republic of Croatia and the Sultanate of Oman for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, Agreement between the Republic of San Marino and the Republic of Croatia for the avoidance of double taxation with respect to taxes on income and Agreement between the Government of the Republic of Croatia and the Government of the Italian Republic for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion) or the time limit is not specified at all (for example Agreement between the Republic of Croatia and the Kingdom of Sweden for the avoidance of double taxation with respect to taxes on income and on capital).

Therefore, taxpayers should always consult the time limit for submitting a complaint prescribed by the relevant DTA at an early stage to ensure that they are submitting the request for MAP assistance within the specified time limit. If the time limit is not explicitly stated in the DTA (Kingdom of Sweden), domestic statutes of limitations apply.

Where the time limit specified in the DTA has not been met, the request for MAP assistance will not be accepted.

Croatian Competent Authority shall deem the date on which the taxpayer receives the first tax assessment notice/decision or equivalent notification that results in double taxation as the beginning of the 3-year period.

4.1.2. Minimum information required for a valid MAP request

In order for a MAP request to be considered a valid request under the DTA, the MAP request submitted to the Competent Authority of the country of residency in accordance with the provision equivalent to Article 25(1) of the OECD MTC should specify:

- Identity (name/business name, address, OIB (personal identification number), date of birth, contact data) of the taxpayer covered by MAP request and other parties in the relevant transaction;
- The tax period concerned;
- Details of the relationship between the taxpayer and other parties to the relevant transaction;
- The legal basis for the request, i.e. the relevant DTA, including the provision(s) of the specific article(s) which the taxpayer considers is not being correctly applied by either one or both Contracting States (indicating which state and the contact details of the relevant person(s) in that state);
- Facts and circumstances of the case (including any documentation to support these facts such as financial statements and company legal agreements, the taxation year(s) or period(s) and covered amounts, in both local and foreign currency);
- An analysis of covered issues (supported with relevant documentation, for example, tax assessment notices, tax audit report or equivalent document leading to the alleged double taxation, evidence of tax paid (where applicable), a copy of the final decision concerning the amount of tax in the form of a final tax assessment decision, tax audit report or other similar document leading to the question in dispute and a copy of any other documents issued by the tax authorities with regard to the question in dispute, where relevant, including the taxpayers' interpretation of the application of the specific tax treaty provision, to support its basis for making a claim that the provision of the relevant tax treaty is not correctly applied by either one or both Contracting States;
- Whether the MAP request has been submitted to another authority under another instrument enabling the dispute resolution mechanism related to DTAs (if yes, this should be clearly stated in the request in addition to the date of submission, name and title of the person, or

department of the authority receiving such a MAP request. A copy of such submission should be provided, unless both MAP requests are completely identical);

- Whether the issues presented in the MAP request have been previously addressed, for example, in an advance ruling, APA, settlement agreement or by any tax court, or information of any complaints by the taxpayer in accordance with another MAP procedure or dispute resolution procedure. This includes details of any appeals or litigation procedures initiated by the taxpayer or the other parties to the relevant transactions. If yes, a copy of these rulings, agreements or any court decisions concerning the case should be provided;
- Taxpayers' statement that they will respond as completely and quickly as possible, providing wholly accurate and complete information, to all reasonable and appropriate requests made by the Competent Authority and to have documentation at the disposal of Competent Authorities;
- Any other information or documentation requested by the Competent Authority. Responses to requests for additional information should be complete and submitted within the time stipulated in the request for such information or documentation.

The taxpayer must undertake to respond as completely and quickly as possible to requests by the Competent Authority for further information.

Where the MAP request under Article 25(1) of the OECD MTC does not contain this minimum information, it will not be regarded as a MAP request by Croatian Competent Authority, i.e. it will not be regarded as submitted for the purpose of satisfying the time limit requirements (refer to item 4.1.1 of the document) in the relevant DTA.

4.2. Complete MAP request and its analysis

While a MAP request will be regarded submitted for time limit purposes where the information set out in item 4.1.2 have been provided, the Croatian Competent Authority will not commence the MAP process until the receipt of a complete request for MAP assistance. Croatian Competent Authority may ask, within 30 days, to supplement the request, and in order for the MAP request to be deemed complete, the taxpayers have to deliver the requested information in accordance with the previous item of this document (listed in Appendix 2 of this document) within 30 days from the date of receiving the request to supplement the initial request. The taxpayers are expected to cooperate entirely with the Competent Authority by providing complete and accurate information in accordance with item 4.1.2 of this document at the time of their receipt of the request, as the Competent Authority is not able to address the resolution of the dispute where there is no necessary information and documentation.

After the Croatian Competent Authority receives the complete MAP request from the taxpayer, it initiates the evaluation and analysis of the said MAP request. In the analysis, the Competent Authority determines whether to accept or reject the MAP request and notifies the taxpayer thereof within 30 days. Also, if the Croatian Competent Authority has accepted the MAP request, it will inform the other Competent Authority thereof within two months after the taxpayer has been notified. Within the same deadline, the Croatian Competent Authority notifies the Tax Administration Local Office having local competency as regards the taxpayer of the matters of accepting and initiating MAP, in order for the Local Office to have knowledge of the new facts and circumstances in connection to the relevant taxpayer.

4.2.1. Factors to be considered in determining whether to accept a MAP request

The factors which the Croatian Competent Authority will consider in determining whether to accept requests for MAP include the following facts:

- there is a DTA in place between the Republic of Croatia and the foreign jurisdiction which contains the appropriate enabling provision and
- the actions of one or both countries result or may result in taxation not in accordance with the provisions of the DTA and
- the Competent Authority received a valid MAP request within the time limit specified in the applicable DTA (refer to item 4.1.1. of this document) and
- the issue or complaint raised by the taxpayer are justified.

The Croatian Competent Authority will notify the taxpayers in writing, where possible, within 30 days of the receipt of the taxpayers' complete MAP request, whether their request has been accepted or rejected. Tax Administration will provide the taxpayers with the reasons for its decision to reject the request, and will inform the other Competent Authority thereof in writing (please refer to bilateral notification in the following sub-chapter).

4.2.2. Bilateral notification and consultation procedure with the other Competent Authority

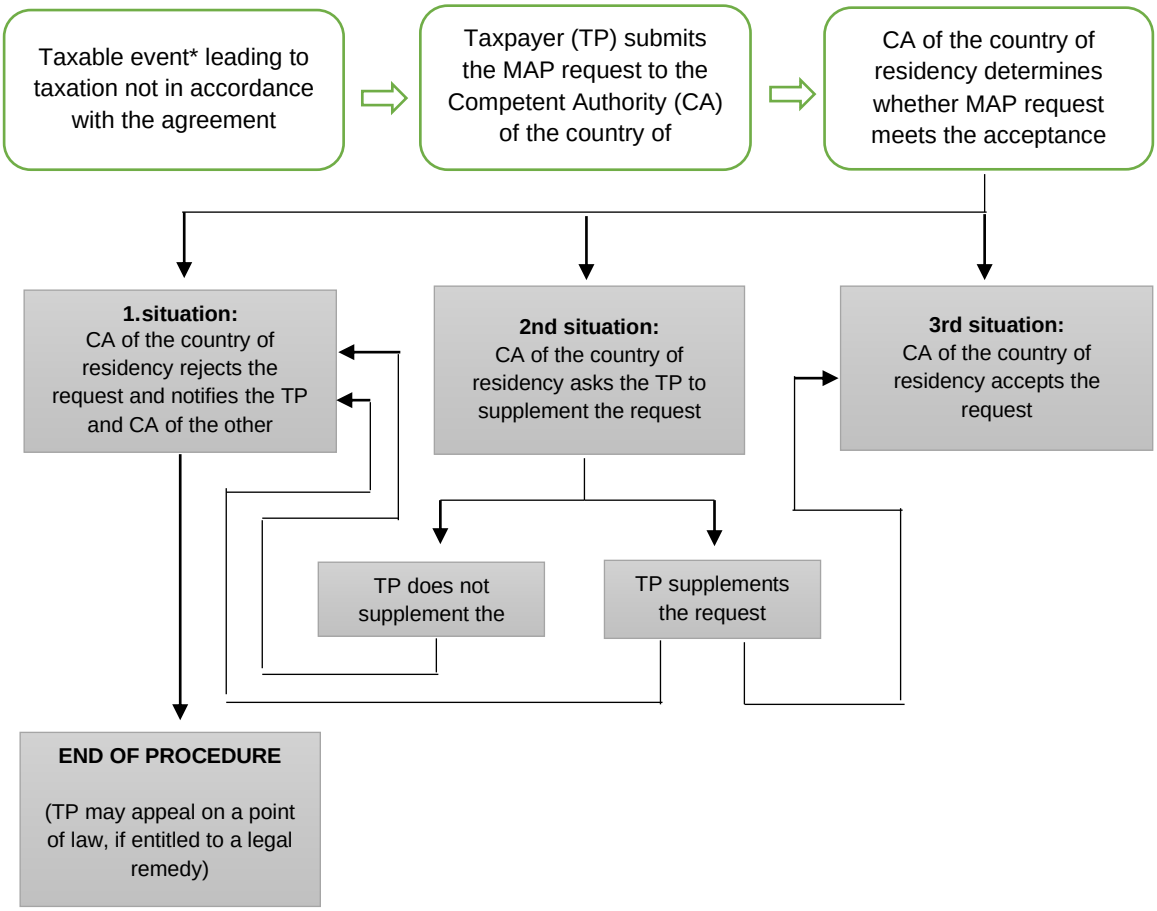
When a MAP request is submitted to the Croatian Competent Authority which establishes, by analysing the request, that the conditions to initialise the procedure have not been met, or for other reasons mentioned in item 4.2 of this document, it will decline the MAP request in written form within 30 days from the receipt of the complete MAP request by taxpayer, and informs in writing the Competent Authority of the other Contracting State, as a rule, within two months after notifying the taxpayer. The Competent Authority may also consult the Competent Authority of the other Competent Authority prior to rejecting the request.

4.2.3. Start/initiation date of a MAP request

The receipt of the information outlined in item 4.1.2. of this document will determine the start date for a MAP request under a DTA. This start date is relevant for the purposes of computing the time needed to resolve a MAP request.[5]

[5]The start date for a MAP case is defined in "MAP Statistics Reporting Framework" published by the OECD in October 2016 (pages 33 – 56).

Stages of making a MAP request



*Refers to an event which led to or will lead to double taxation or taxation not in accordance with the provisions of the agreement.

5. Resolution of a MAP request

There are a number of potential outcomes[6] in a MAP case, including:

- Denying of a MAP request (for example, the request is not permissible or has been denied for another reason);
- Objection is not justified;
- Objection has been resolved via domestic legal remedies;
- Unilateral relief;
- Agreement of Competent Authorities fully eliminating or resolving double taxation;
- Agreement of Competent Authorities partial eliminating or resolving double taxation;
- Agreement of Competent Authorities that there is no taxation which is not in accordance with the relevant DTA;
- Competent Authorities did not reach an agreement, nor an agreement that they disagree;
- Taxpayer withdrew the MAP request;
- Any other outcome.

[6] http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf .

In line with BEPS Action 14[7], the Croatian Competent Authority is committed to resolve MAP cases within an average time limit of two years from the receipt of the complete MAP request. However, this is dependent on a number of factors such as the complexity of the case, the cooperation of the taxpayer and communication with the Competent Authority of the other state and the number of rounds of negotiations required.

5.1. Unilateral relief

When a MAP request has been submitted to the Croatian Competent Authority, in its capacity of the Competent Authority of the country of residency in accordance with the MAP article of the DTA, the Croatian Competent Authority will firstly, if the request seems justified, try to resolve the issue unilaterally, without counselling other Competent Authority. Where the case is resolved unilaterally, the Croatian Competent Authority notifies the taxpayer thereof within 30 days from the day of resolution, while it notifies the Competent Authority of another involved jurisdiction and Tax Administration Local Office in view of implementing MAP within two months.

If the Croatian Competent Authority is not itself able to arrive at a satisfactory solution, it will contact the Competent Authority of the other jurisdiction to initiate negotiations in view of potential resolution of MAP-related procedure.

5.2. Competent Authority Agreement

If the Croatian Competent Authority fails to reach a unilateral exemption, it will try to resolve the issue by mutual agreement with the Competent Authority of the other jurisdiction concerned. The Croatian Competent Authority will submit to the other Competent Authority its standpoint as regards the respective MAP within four to six months after the receipt of the complete MAP request.

MAP discussions between the Tax Administration and the other Competent Authority are a government-to-government process. Taxpayer involvement in the MAP is generally limited to presenting its views to both Competent Authorities and providing the relevant information. Taxpayers are not involved in the actual discussions between the Competent Authorities. However, where appropriate, taxpayers may be invited to present the case before the Competent Authorities to ensure a common understanding of the facts of a particular case. The Competent Authority will inform the taxpayer (via phone or e-mail) about stages of the procedure in general.

After the Croatian Competent Authority and the Competent Authority of the other state reach mutual agreement, the Croatian Competent Authority, within 30 days, notifies the taxpayer about the agreed result in written form. Croatian Competent Authority will ask the taxpayers to confirm, in written form, whether they accept the mutual agreement within 30 days from the receipt of the written notice of the Competent Authority. If the taxpayers reject the mutual agreement reached between the Competent Authorities, they can withdraw from the MAP process and pursue any available domestic remedies.

It should be noted that Article 25(2) of the OECD MTC prescribes that both Competent Authorities have to negotiate for the purpose of avoiding double taxation. However, if there is no mandatory and binding arbitration, there is no guarantee that the case will be successfully resolved.

[7] https://read.oecd-ilibrary.org/taxation/making-dispute-resolution-mechanisms-more-effective-action-14-2015-final-report_9789264241633-en#page1

5.2.1. Implementing the agreement

If the taxpayer confirms in writing the acceptance of the mutual agreement, the Croatian Competent Authority will seek to ensure its implementation without delay. In cases where a refund is due to the taxpayer, the taxpayer should contact its locally competent Tax Administration Local Office to begin the process of obtaining the refund. The taxpayer will be required to submit revised tax computations for the concerned accounting periods to the competent Tax Administration Local Office.

Croatian Competent Authority seeks to guarantee the implementation of every mutual agreement irrespective of domestic statutes of limitations. If, during MAP procedure, domestic statutes of limitations expire, which may affect the possibility to implement mutual agreement, Croatian Competent Authority will inform the other Competent Authority thereof, in the interests of clarity and transparency.

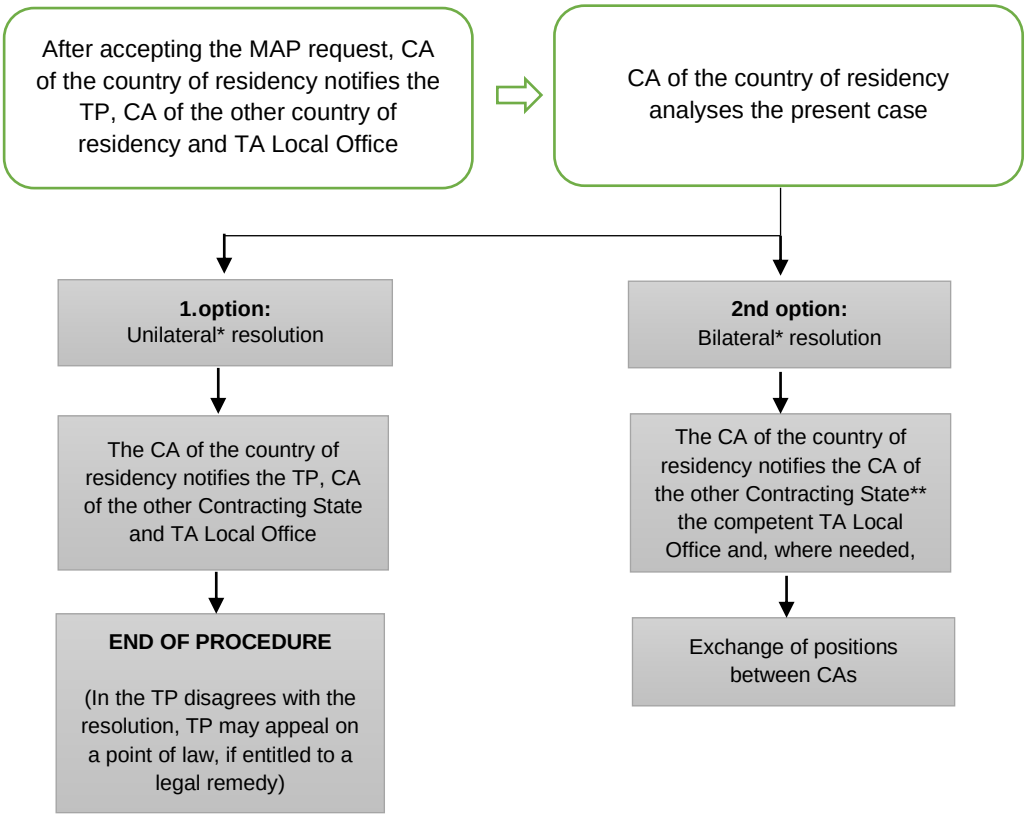
5.3. Competent Authority agreement has not been reached

In the event that Tax Administration is unable to reach agreement with the Competent Authority of other state and in the absence of mandatory binding arbitration, the Croatian Competent Authority will notify the taxpayer in writing, within 30 days, setting out the reasons for not reaching the agreement. Within the same deadline, the Croatian Competent Authority notifies the competent Tax Administration Local Office. Except for cases involving arbitration (refer to item 6 of this document), the Croatian Competent Authority is not obliged to engage in further discussions with the other Competent Authority where Competent Authorities believe that agreement cannot be reached.

5.4. MAP request withdrawn by the taxpayer

Where a taxpayer wishes to withdraw a MAP request, the taxpayer is required to provide the Competent Authority of the state of residency (to which he submitted the MAP request) a written notification of the withdrawal of the MAP request, without delay. This notification should include the reason for the withdrawal (for example resolution of the issue through legal remedies provided by the domestic law of a Contracting State). The Competent Authority which has received the written notification of the withdrawal of the MAP request, notifies, without delay, the Competent Authority of the other state if the MAP has already commenced, as well as the competent Tax Administration Local Office.

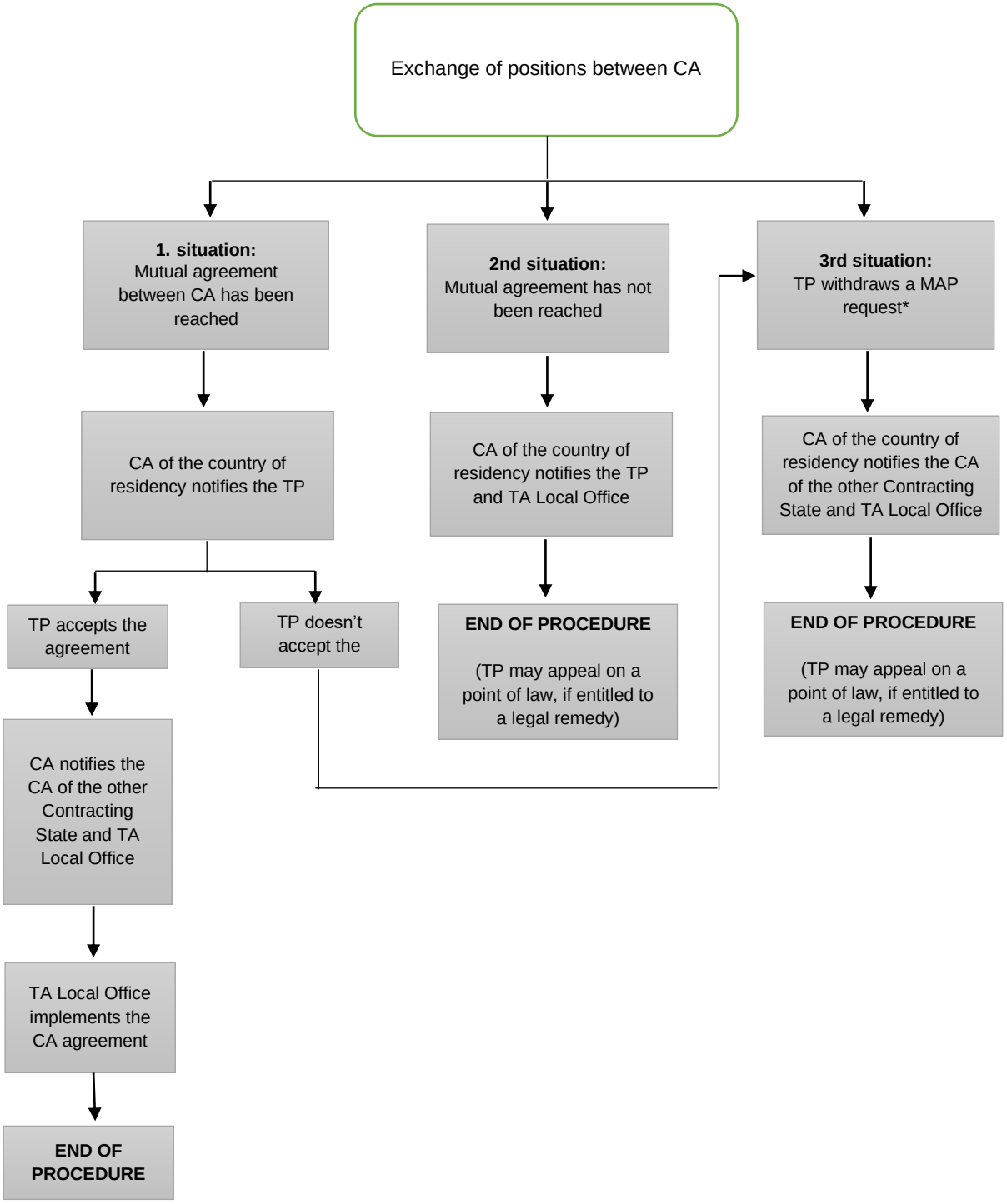
Stages of analysing the MAP request



* Unilateral resolution refers to situations where the Competent Authority of the country of residency is able to independently remove double taxation without any agreement with the Competent Authority of the Contracting State. This excludes the situations when MAP issue is resolved through one of the commenced legal remedies.

** Competent Authority of the country of residency may send their position to the Competent Authority of the other Contracting State.

Stages of agreeing and resolving a MAP between Competent Authorities



* Taxpayer may withdraw the MAP request in any moment after its submission, by sending a written request to the Competent Authority of the country of residency to withdraw the MAP.

6. Interaction with domestic legal remedies

A taxpayer may request MAP assistance irrespective of the remedies provided by Croatian domestic law.
A taxpayer may request MAP assistance from the Croatian Competent Authority in situations where a decision has been rendered by a second-instance authority or Croatian court. Taxpayer may submit a request for MAP assistance for the duration of judicial or administrative proceedings, and if the taxpayer proceeds with judicial or administrative proceedings, the Competent Authority will delay the MAP process pending the outcome of the administrative or judicial proceedings.

If the Competent Authorities cannot reach agreement through MAP-related proceedings or if the taxpayer rejects the agreement between the Competent Authorities, the taxpayer can pursue any available domestic administrative or judicial remedies.

7. Confidentiality

The information submitted to the Competent Authority in connection with the MAP request will be treated as confidential in accordance with the provisions of the General Tax Act (Official Gazette no. 115/16, 106/18, 121/19, 32/20, 42/20; hereinafter: GTA) and the provisions of the Article on the exchange of notices of the relevant DTA.

The exchange of information between Croatian Competent Authority and the Competent Authority of other Contracting State is carried out in accordance with the provisions of the relevant DTA. Information exchanged under Croatian DTAs is confidential and may only be used and disclosed in accordance with the provisions of the agreement.

8. Arbitration

The Competent Authorities will endeavour to resolve cases with the objective of eliminating double taxation. However, it may not always be possible for the Competent Authorities to reach agreement, in which case arbitration may be available under the relevant DTA.

MAP arbitration provisions are included in the two of the Croatian DTAs (Agreement between the Republic of Croatia and the Kingdom of the Netherlands for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on capital and Agreement between the Government of the Republic of Croatia and the Government of the Italian Republic for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion), however, initiation of arbitration is on a voluntary basis, i.e. arbitration is not mandatory.

Mandatory and binding arbitration is also, as a special chapter (Chapter VI), contained in the Multilateral Convention, however, Croatia did not adopt this provision by ratifying the Multilateral Convention. Taxpayers should consult the relevant DTA and the relevant Multilateral Convention provisions (following ratification by both treaty partners) when making a MAP request.

9. Other relevant guidance

Relief from collections, interest and penalties – under Croatian domestic legislation, there is no suspension of tax collection during the MAP procedure. Where applicable, interest and penalties will apply in accordance with GTA.

Anti-abuse and domestic anti-abuse provisions of the agreement - Where issues arise relating to the application of anti-abuse provisions or the application of domestic anti-abuse provisions, Croatia will, on the request of the taxpayer, engage in consultation with the Competent Authority of the other

Contracting State.

However, taxpayers should be aware that while the Croatian Competent Authority will engage with the tax authority of the other relevant jurisdiction in relation to MAP requests which concern the application of treaty and/or domestic anti-abuse provisions, any claim of taxation not in accordance with the provisions of the convention may not necessarily be resolved and any double taxation may not be eliminated.

Audit settlement - Audit settlement agreements between tax authorities and taxpayers do not preclude access to MAP.

Multiple years - Taxpayers may submit MAP requests that span multiple years, subject to the time limit in the relevant DTA.

Multilateral MAPs - Where a MAP issue involves more than two tax jurisdictions, the Croatian Competent Authority will consider entering into a series of bilateral MAPs as a way of dealing with such multilateral situations. Competent Authority will also consider requests by the taxpayer to implement multilateral MAPs with the other Competent Authorities, subject to the terms of the relevant DTAs.

Absence of Article 9(2) in the DTA – Economic double taxation may occur in cases of transfer pricing or attributing profits to a permanent establishment due to the inclusion of profit in the profits of a Contracting State for which the company of the other Contracting State has already paid taxes in this other State, in accordance with the provision equal to Article 9(1) of the OECD MTC. Article 9(2) of the OECD MTC provides for the implementation of appropriate adjustment in order to eliminate economic double taxation that would normally occur. Where the DTA contains no provision equal to Article 9(2), the Croatian Competent Authority deems such economic double taxation as implicitly covering the scope of DTA thanks to the inclusion of Article 9(2), and the Competent Authority is, accordingly, willing to examine the MAP request or appropriate adjustment.

TITLE II
Dispute resolution guidance in accordance with the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises – 90/436/EEC (Arbitration Convention)

1. Introduction

Arbitration in tax matters at EU level may be voluntary, which means that the arbitration provision is a constituent part of the DTA (as previously mentioned in Title I of this document) or it may be mandatory (for example, in view of transfer pricing) in relation to what the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises – 90/436/EEC, or Arbitration Convention, was adopted. The difference between arbitration provision in the Arbitration Convention and DTAs lies in the fact that the dispute which is not resolvable within two years, in accordance with the Arbitration Convention, is submitted to the advisory commission which is obliged to deliver its opinion on the question in dispute in not more than six months, while the DTAs do not prescribe such an obligation. The opinion of the advisory authority is binding. The Republic of Croatia applies the Arbitration Convention from 1 January 2015.

The Arbitration Convention applies where, for the purposes of taxation, profits of an enterprise of a Contracting State are also included or are also likely to be included in the profits of an enterprise of another Contracting State on the grounds that the arm's length principle has not been observed. Arm's length principle is an international standard which the OECD member states have agreed to apply in relation to transfer pricing for taxation purposes, and is a constituent part of Croatian DTAs. Article 9 of the DTA states the following: "Where (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly." The purpose of the Arbitration Convention is to improve the Competent Authority procedures when resolving such cases so that, where Competent Authorities are unable to resolve the double taxation within two years, and the opinion on the relevant case is adopted by the advisory commission, and is binding.

2. Competent Authority for dispute resolution in accordance with Arbitration Convention

The Competent Authority for dispute resolution in accordance with Arbitration Convention in the Republic of Croatia is the Ministry of Finance, Tax Administration.[8] The taxpayers may ask for assistance within the mutual agreement procedure (MAP) in accordance with the conditions of Arbitration Convention. MAP assistance is provided by Tax Administration – Central Office, DTA Department within the Legislation, Education and International Cooperation Division. Contact details for submitting a MAP request to the Tax Administration are included in Appendix 1 of this document.

[8]Specific Tax Administration employees are authorised representatives to act as Competent Authority in accordance with the conditions of the Arbitration Convention. The role of the Competent Authority is carried out irrespective of the inspector's role with the Tax Administration.

3. Dispute resolution procedure in accordance with the Arbitration Convention

The procedure under the Arbitration Convention is distinctive in comparison to MAP under the DTAs. The overall procedure is described in the Arbitration Convention and may be divided in two stages:

- MAP which commences by reporting the case in dispute to the Competent Authority lasting for two years, during which time Competent Authorities should reach an agreement, and if they fail to do so and the case remains unresolved, the dispute moves to second stage;
- Arbitration procedure, when an opinion has to be adopted no later than six months after the case in dispute has been referred to the Commission.

3.1. MAP (making a MAP request)

Article 6 of the Arbitration Convention provides that where a taxpayer considers that the principles set out in Article 4 the Arbitration Convention have not been observed, it may request a MAP at the Competent Authority of the Contracting State. If it finds that the arm's length principle has not been observed, irrespective of the remedies provided by the domestic law of the Contracting States concerned, it may present its case to the Competent Authority of the Contracting State of which it is a resident or in which its permanent establishment is situated.[9]

3.1.1. Valid MAP request as considered by the Competent Authority

In order to request MAP assistance under Arbitration Convention, the taxpayer has to submit a request for MAP assistance in written form and state the requested information as set out in item 3.1.1.2 of this document if it finds that the principles set out in the provisions of the Arbitration Convention have not been observed.

Request for MAP has to be submitted within a time limit set out in Article 6 of the Arbitration Convention (please refer to item 3.1.1.1. below). Submitting a MAP request is free of charge and it should not cause inappropriate and too high costs for the requesting person nor any other participant in the dispute.

3.1.1.1. Time limit for making a MAP request

When taxpayers submit a MAP request in accordance with the Arbitration Convention, Article 6(1), it is provided that the case must be presented within three years of the first notification of the action which results or is likely to result in double taxation.

The Revised Code of Conduct for the effective implementation of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (hereinafter: Revised Code of Conduct) in Article 4 determines the notion of "first notice", that is the starting point of the three-year period for submitting the request for procedure before the Competent Authority. The first notice is 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.

In the Republic of Croatia, the day of receipt of the tax administrative act which is likely to result in double taxation is deemed as the moment when the three-year period for MAP commences.

3.1.1.2. Minimum information required for a valid MAP request

In order for a MAP request to be considered a valid request under the EU Arbitration Convention, the

[9]Article 6, paragraph 1 of the Arbitration Convention

MAP request submitted to the Competent Authority should specify:[10]

- the identification of the taxpayer/enterprise (name, address, OIB) of the submitting Member State and the other parties to the relevant transactions;
- the tax period concerned;
- details of the relevant facts and circumstances of the case (including relationship between the enterprises and other parties to the relevant transaction);
- copies of any tax assessment notices, tax audit reports or equivalent documents leading to the alleged double taxation;
- details of any appeals and litigations initiated by the taxpayer or other parties to the relevant transactions and any other court decision relevant to the case;
- an explanation by the taxpayer of why it considers that the principles of the Arbitration Convention have not been observed.

The taxpayer must undertake to respond as completely and quickly as possible to requests by the Competent Authority for further information. The failure of the taxpayer to cooperate may have a negative impact on the whole procedure, because it will be prolonged, due to delays.

3.1.2. Complete MAP request and its analysis

The Competent Authority will notify the taxpayer of the receipt of the MAP request within 30 days after its receipt and will notify at the same time the Competent Authorities of other participating jurisdictions with enclosed copy of the request. Where the Competent Authority finds that the taxpayer failed to submit the most important information needed to initiate MAP, it will ask the taxpayer to submit the additional necessary notifications. If there is a need, the Competent Authority will notify the Competent Authorities of other participating members about the call to supplement the request.

The Member States commits that the Competent Authority will notify the applicant in one of the following ways:

- where the Competent Authority establishes that the profits of an enterprise is included, or it is certain that it will be included, in the profits of an enterprise of another Member State, it will notify the enterprise about its doubts and ask it to submit additional comments;
- where the request of the Competent Authority seems well justified, and a satisfactory resolution may be expected, it will notify the enterprise, and carry out the adjustment or allow such deductions as justified;
- where the Competent Authority request is well-founded, but it may not result in a satisfactory resolution, it will notify the enterprise on the effort to remove the dispute through MAP with the Competent Authority of any other Member State;
- where Competent Authority finds the case well justified, MAP should be initiated by notifying the Competent Authority of other Member State and the person initiating the arbitration of its decision, that is, the initiation of MAP, and attaching the copy of data.

If the Competent Authority, which has received the MAP request, determines on the basis of MAP request, and all the available data and documentation (for example tax returns, records of previous audits etc.), that the complaint is founded, and if it is unable to reach a satisfactory solution on its own, it has to endeavour to resolve the case by mutual agreement with the Competent Authority of every other interested Contracting State, for the purpose of eliminating double taxation.[11] The receiving Competent Authority shall decide whether the request is well-founded or not.

[10] https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/final_report_ac_jtpf_002_2015_en_final_clean.pdf, item 7.2.

[11] Article 6(2) of the Arbitration Convention

3.1.2.1. Possibility to reject MAP

The Competent Authority of the Contracting State is not obliged to initiate MAP if there is a decision which is rendered final by virtue of court of administrative procedure, and according to which one of the enterprises is subject to serious sanctions due to actions which enable the adjustment of the transfer of profits. Arbitration Convention does not specify a serious sanction. Further instructions on how a serious sanction should be defined is contained in the Revised Code of Conduct in Article 3:
"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 are recommended to clarify or revise their unilateral declarations in the Annex to the Arbitration Convention in order to better reflect that a serious penalty should only be applied in exceptional cases like fraud."

Where the request is rejected, the Croatian Competent Authority will notify the taxpayer within 30 days from the receipt of MAP request.

3.1.2.2. Start/initiation date of a MAP request

For the purpose of determining the date of initiating the two-year period in accordance with Article 7(1) of the Arbitration Convention[12], a MAP request will not be deemed initiated until the relevant information established in item 3.1.1.1.2 of this document will have been submitted (that is, in Appendix 2 of this document). The taxpayers are advised to seek further information in the Revised Code of Conduct.

3.1.3. Resolution of a MAP request

The competent Authority will, when submitted with the MAP request, first try to resolve the issue unilaterally, without counselling the other Competent Authority. Where the case is resolved unilaterally, the Competent Authority notifies the taxpayer thereof within 30 days from the day of resolution and the Competent Authority of another Contracting State within two months.

Where the Competent Authority is not able to achieve a satisfactory solution on its own, it shall refer to the Competent Authority of the other Contracting State. The Competent Authorities commit to exchange initial positions in connection to the conflicting case after the initiation of MAP. A State in which double taxation of profits was caused by the decision of its tax authority is the first to send its position to the other Contracting State as soon as possible, having in mind the complexity of the dispute, but within six months or after:

- the notification on tax assessment will have arrived, that is, the final decision of the tax administration about additional profits, or equal amount,
- the Competent Authority will have received the request stating the most important data in accordance with the Revised Code of Conduct.

The Competent Authority of the Member State commits to responding as soon as possible upon receiving the initial position of the other Competent Authority, having in mind the complexity of the dispute, but no later than six months after the receipt of initial position. Response should be provided in one of the two following forms:

1. Where the Competent Authority finds that double taxation has occurred, or it is certain that it will occur, and agrees to the suggestions about the initial position, it will notify the other

[12] Article 7(1) of the EU Arbitration Convention provides for a period of two year for the Competent Authorities to resolve the case before the case is submitted to the Advisory Commission (Arbitration Council).

Competent Authority thereof, carry out the adjustment or approve the relief as soon as possible;

2. Where the Competent Authority finds that no double taxation has occurred, or rejects the remedy suggested in the initial position, it will notify the other Competent Authority, stating the reasons and suggesting clear time limits for dispute resolution, having in mind its complexity. The suggestion, when appropriate, includes the date for a meeting to be held within 18 months upon the receipt of the tax assessment notice, that is, the final decision of the tax administration about additional income or from the day when the Competent Authority receives the request and the minimum of data from the other side.

3.1.3.1. Time limit for resolving a MAP request

Every mutual agreement between countries has to be implemented irrespective of time limits provided by domestic regulations of the two Contracting States. The time limit in which Competent Authorities of two (or more) states have to reach an agreement is equal to two years from the moment when the case was first brought to one of the Competent Authorities. In the MAP procedure, the Competent Authorities may withdraw from the time limits established in paragraph 1 of the Arbitration Convention, with the consent of associated concerned enterprises, which means that the deadline may be prolonged.

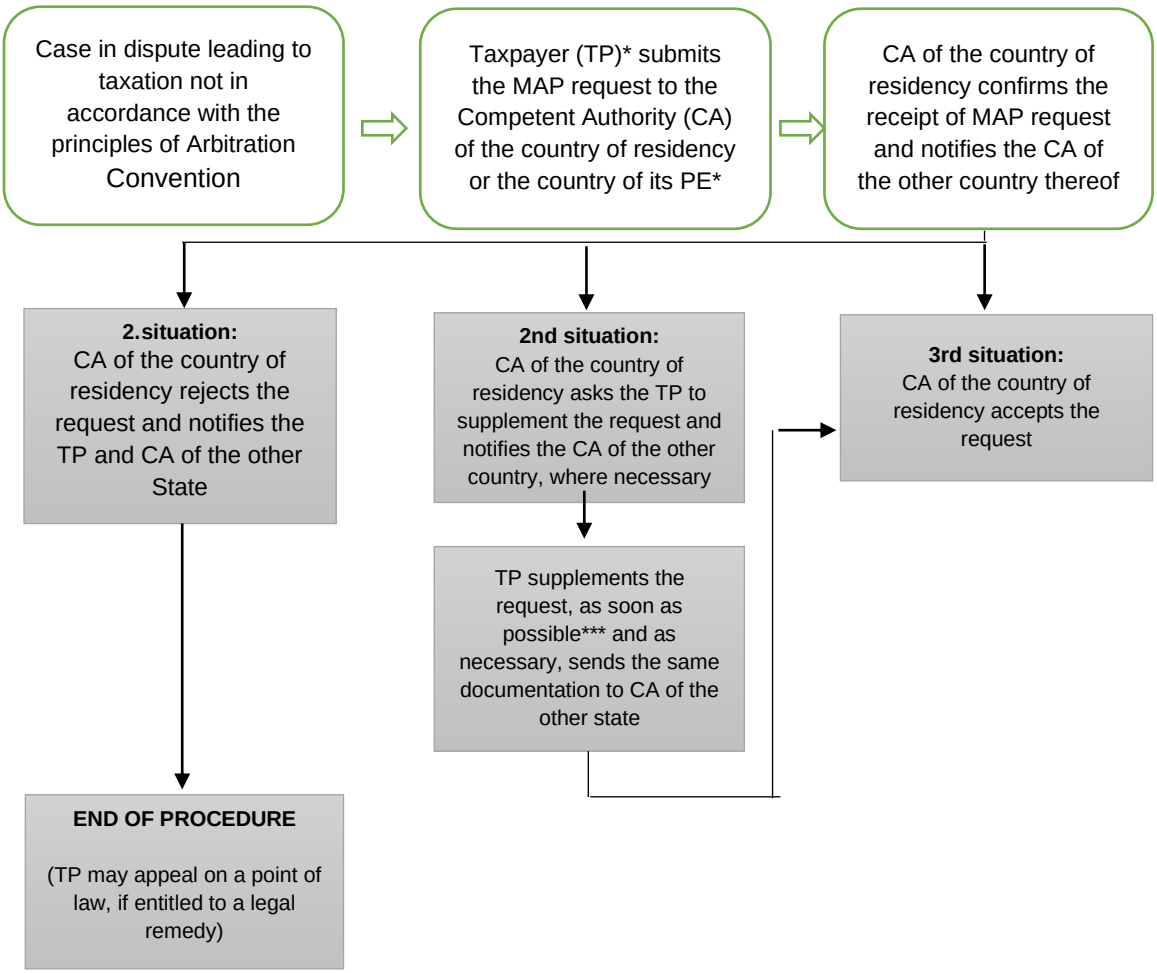
When there is a procedure pending before the regular court in a certain state, the two-year time limit for resolution commences, that is, will be calculated from the day when the ruling of the highest court has been delivered.[13]

Where the Competent Authorities fail to reach an agreement within two years after the first bringing of the dispute before one of the Competent Authorities, the arbitration procedure will be initiated in order to resolve the dispute.

[13]Article 7(1) of the Arbitration Convention.

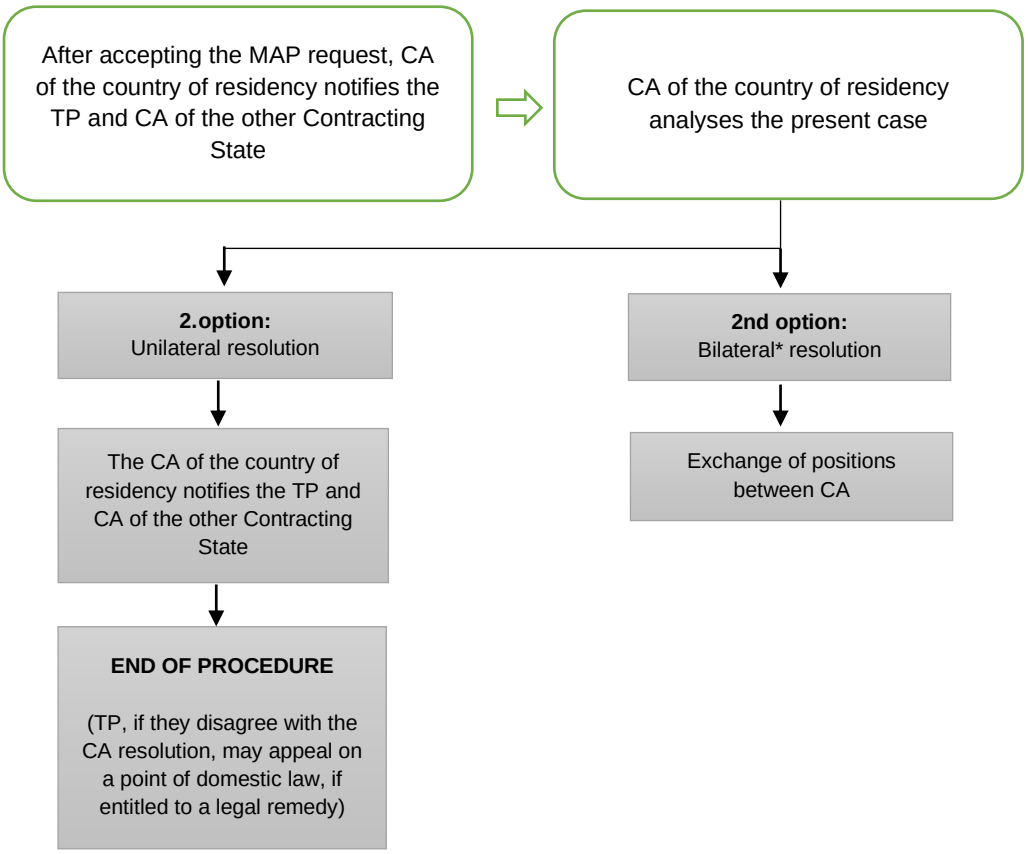
1. Stage: MAP

Making a MAP request

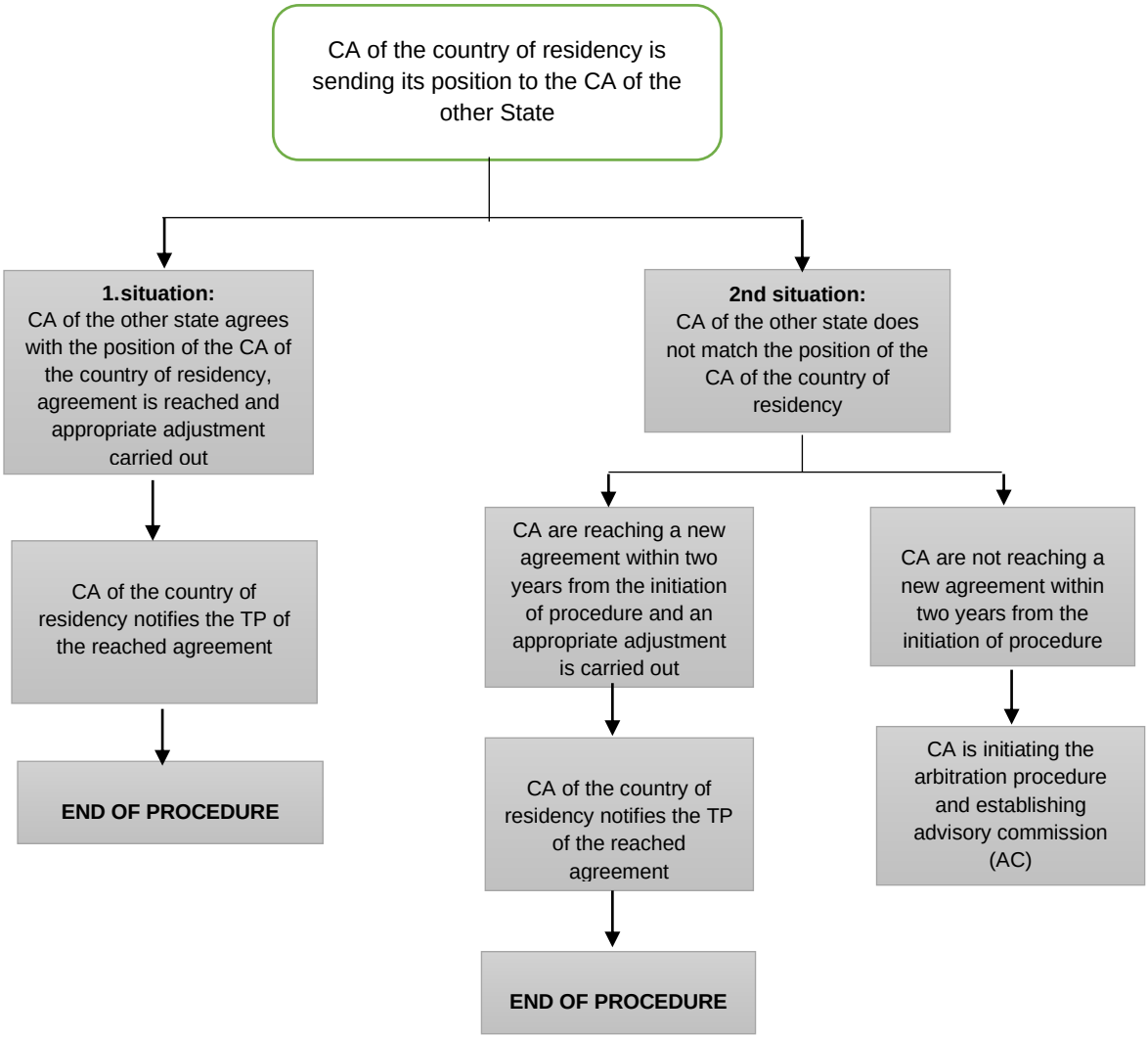


* The taxpayer is solely an enterprise; it cannot be natural person.
****** The taxpayer may deliver the copy of MAP request at the same time to the Competent Authority of the other state (or Competent Authorities of other included state if several states are included in the procedure).
*** If the taxpayer delays with supplementing the MAP request, the MAP request will be accepted, and this may have a negative impact on the entire procedure as the procedure will be prolonged due to the delay.

Analysing the MAP request



Exchange of positions between Competent Authorities



3.2. Arbitration procedure

As previously stated, if agreement eliminating double taxation is not reached, as set out in Article 6 of the Arbitration Convention, 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) of the Arbitration Convention, the Competent Authorities will set up an advisory commission charged with delivering its opinion on the elimination of the double taxation in question.[14]

The advisory commission referred has to deliver its opinion not more than six months from the date on which the matter was referred to it, and it has to be based on the arm's length principle. The opinion is adopted by a simple majority of its members and is binding for member states. However, the Competent Authorities may take a decision which deviates from the advisory commission's opinion. If they fail to reach agreement, they shall be obliged to act in accordance with that opinion. Acting by common consent, the Competent Authorities will take a decision which will eliminate the double taxation within six months of the date on which the advisory commission delivered its opinion.

[14]Article 7(1) of the Arbitration Convention.

The two-year time limit for dispute resolution starts from the day when the advisory commission has at its disposal the request with all the necessary information and documentation. The Competent Authorities may, in accordance with the provision of Arbitration Convention and mutual agreement, and with the consent of the concerned taxpayer, deviate from the two-year deadline.

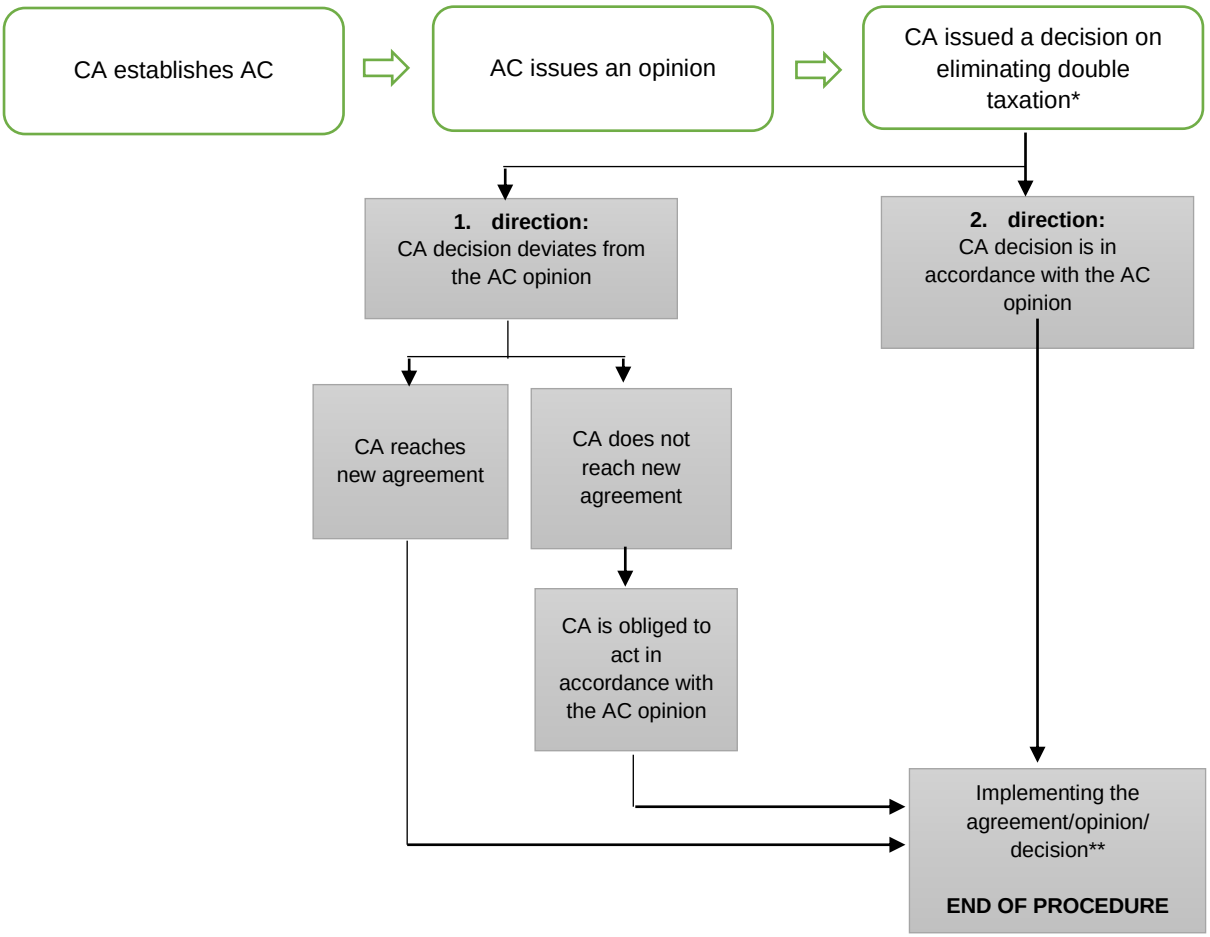
3.2.1. Advisory Commission

The Contracting State that issued the tax assessment decision which results double taxation takes the initiative for the establishment of the advisory commission and arranges for its meetings. The deadline for setting up the Advisory Commission is no later than six months following expiry of the two-year period in which no agreement has been reached in connection to MAP. Where one Competent Authority does not do this, another Competent Authority involved is entitled to take the initiative. The Member States will provide all relevant documentation and information and in particular all documents, reports, correspondence and conclusions used during the mutual agreement procedure. 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.

The advisory commission will consist of the Chairman, two representatives from each Competent Authority, even number of independent persons of standing appointed on the basis of international agreement of two Competent Authorities from the list of persons or, if there is no agreement, Competent Authorities will reach the decision by the drawing of lots. When appointing independent persons of standing, in accordance with the rules on the appointment, each will be nominated with their replacements for when independent persons are prevented from performing their duty. The list of independent persons of standing contains all the independent persons suggested by the Contracting States, therefore, each state suggests five persons, of which it informs the Secretary-General of the Council of the EU. The representatives and independent persons of standing have to choose a chairman among the listed experts, without prejudice to the right of every Competent Authority to contest the appointment of the elected person of standing. The Chairman of the Commission should have qualifications required for the highest judicial appointments in his state or be a legal advisor of recognized competence.

The opinion adopted by the Advisory Commission has to contain the names of the members of the Commission, the request with names and addresses of enterprises and participating Competent Authorities, description of facts and circumstance of the dispute, clearly stated requests, brief summary of the implemented procedures; arguments and methods on which the decision stated in the opinion is based; only the opinion; the place where the opinion is to be delivered and the lists of the members of the Advisory Commission. Following the decision, the Competent Authority initiating the procedure will deliver the copy of the decision and the opinion of the Advisory Commission to every participating Competent Authority and enterprise. Competent Authorities of Member States may agree to publish the decision and opinion in their entirety, to withhold the names of participating persons and entrepreneurs, or to delete other details which may disclose identity. In both circumstances, the Competent Authority initiating the procedure requires a consent of the participating enterprise in written form in order to avoid complaints regarding the publishing.

2. Stage: Arbitration procedure



*Following the decision of the Competent Authorities, the Competent Authority of the country of residency sends a copy of the decision and opinion of the Advisory Commission to the Competent Authority of other State, that is, all of the involved Competent Authorities (if there are more) and the Competent Authorities agree on their public notification.
** The decision of Competent Authorities may be implemented even when the taxpayer has officially recognized it.

3.3. Interaction with domestic legal remedies

Croatian Competent Authority may suspend MAP or arbitration procedure until the closure of the court or administrative procedure, conducted at the same time as MAP or arbitration procedure, and initiated for the purpose of reaching the decision under which the respective enterprise is subject to serious sanctions for performing actions which lead to adjustment of profits in accordance with Article 4 of the Arbitration Convention.

In the event when the domestic law of the Contracting State does not allow the Competent Authorities of that State to withdraw from the decisions of their judicial authorities, Article 6(1) of the Arbitration Convention (initiating MAP or arbitration procedure) does not apply, unless associated enterprise of the State allows for the deadline provided for an appeal to expire, or it withdrew such an appeal prior to reaching the Decision. This provision does not reflect on the appeal if it relates to the subjects different from those referred to in Article 6, and in the extent to which it refers to them.

3.4. Confidentiality

The information submitted to the Croatian Competent Authority in connection with MAP and Arbitration Procedure will be treated as confidential in accordance with the provisions of the General Tax Act (Official Gazette no. 115/16, 106/18, 121/19, 32/20, 42/20; hereinafter: GTA) and the provisions of the Revised Code of Conduct.

The confidentiality of intergovernmental communication should be observed, as set out in the preamble of the Revised Code of Conduct. To this effect, every provided, received or transmitted information by the Competent Authority is deemed, in accordance with the Arbitration Convention, as tax secret.[15]

Article 10 of the Arbitration Convention prescribes that the concerned associated enterprises may provide any information, evidence or documents which seem to them likely to be of use to the advisory commission in reaching a decision. The enterprises and the Competent Authorities of the concerned Contracting States give effect to any request made by the advisory commission to provide information, evidence or documents. However, the Competent Authorities of any such Contracting State are not under any obligation:

- to carry out administrative measures at variance with its domestic law or its normal administrative practice,
- to supply information which is not obtainable under its domestic law or in its normal administrative practice, or
- to supply information which would disclose any trade, business, industrial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

Also, the members of the Advisory Commission must keep secret all matters which they learn as a result of the proceedings.

[15] https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/final_report_ac_jtpf_002_2015_en_final_clean.pdf, item 3.

TITLE III

Guidelines for requesting mutual agreement procedure under Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union

1. Introduction

The Act on Tax Dispute Resolution Mechanisms in the European Union was published on 16 October 2019 (Official Gazette, no. 98/2019), and entered into force on 24 October 2019. The said Act implements the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (hereinafter: EU Council Directive) into the legal order of the Republic of Croatia.

The EU Council Directive lays down rules on a mechanism to resolve disputes between Member States of the European Union when those disputes arise from the interpretation and application of agreements and conventions that provide for the elimination of double taxation of income and, where applicable, capital. The Council Directive also lays down the rights and obligations of the affected persons when such disputes arise, and its provisions refer to all complaints in connection to the question in dispute which relates to income, profit or capital in the tax year starting from 1 January 2018, or after.[16]

Double taxation of income/profit of taxpayers in different Member States has a negative impact on cross-border investment, creating an unstable environment for both taxpayers and tax administrations. EU Member States already have dispute resolution mechanisms related to double taxation, such as MAP within tax treaties or Arbitration Convention. Those instruments have several shortcomings within the scope, efficiency and effectiveness. At the moment there is often no obligation for Member States to provide timely and efficient dispute resolution. In addition, the application of dispute resolution mechanisms in EU is not unique. In order to find the best solution for the EU Member States to incorporate in their legislation, the said Council Directive was adopted whereby the existing double taxation dispute resolution mechanisms in EU would be combined with binding arbitration.

The rules of the EU Council Directive seek to improve the efficiency and effectiveness of double taxation dispute resolution mechanisms because they create serious obstacles to good functioning of internal market. Double taxation dispute resolution mechanisms are bilateral or multilateral actions and demand a unified action between EU Member States. Member States depend on each other when applying double taxation dispute resolution mechanisms: even when there are double taxation dispute resolution mechanisms, the identified shortcomings such as denying access or the length of procedure will be effectively eliminated only if Member States work on them together and agree upon them mutually.

The EU Council Directive is largely based on the conditions of the Arbitration Convention, which is a part of the EU acquis. The Directive expands the dispute resolution mechanism to all situations of cross-border operations subject to double taxation of the profits of an enterprise.[17] The purpose of eliminating double taxation and particular situations affected by it are reiterated in the same wording as the Arbitration Convention. However, the EU Council Directive adds explicit obligation for the Member States to achieve results and a clear deadline. On the other hand, situations that relate to double

[16] Council Directive EU 2017/1852 refers to all other complaints submitted from 1 July 2019 onwards relating to questions in dispute relating to income or capital earned in a tax year commencing on or after 1 January 2018. However, the Competent Authorities of Member States concerned may agree to apply this Directive with regard to any complaint that was submitted prior to that day or to earlier tax years.

[17] Article 1 of EU Council Directive.

taxation or tax fraud, wilful default or gross negligence are excluded.[18]

2. Competent Authority for dispute resolution in accordance with the EU Council Directive

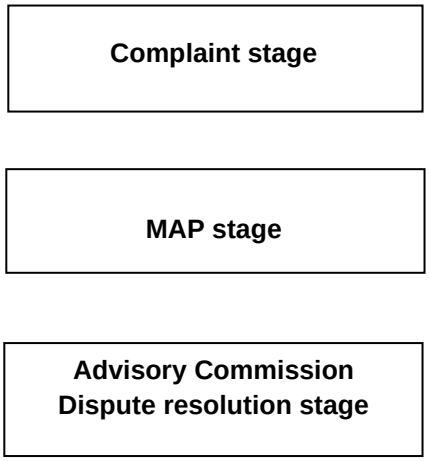
The Competent Authority for dispute resolution in accordance with the EU Council Directive in the Republic of Croatia is the Ministry of Finance, Tax Administration.[19] The taxpayers may ask for assistance within the mutual agreement procedure (MAP) in accordance with the conditions of EU Council Directive. MAP assistance is provided by Tax Administration – Central Office, DTA Department within the Legislation, Education and International Cooperation Division. Contact details for submitting a request for MAP assistance to the Tax Administration are included in Appendix 1 of these guidelines.

3. Dispute resolution procedure in accordance with the EU Council Directive

In accordance with EU Council Directive, MAP is enabled, and is initiated by taxpayer's complaint, while Member States freely cooperate within it, reaching an agreement on the double taxation dispute within two years.[20] Where MAP fails, dispute resolution procedure is automatically initiated whereby Competent Authorities of participating member states issue a final mandatory and binding decision. There are three stages of dispute resolution procedure.

- complaint
- MAP
- dispute resolution by the Advisory Commission

Double taxation dispute resolution mechanism: stages of procedure



3.1. Complaint

Article 3 of the EU Council Directive prescribes that any affected person shall be entitled to submit a complaint on a question in dispute to each of the Competent Authorities of each of the Member States concerned, requesting the resolution thereof. The affected person shall simultaneously submit the complaint with the same information to each Competent Authority, and shall indicate in the complaint which other Member States are concerned.

[18] Article 15 of EU Council Directive.

[19] Specific Tax Administration employees are authorised representatives to act as Competent Authority in accordance with the conditions of the EU Council Directive. The role of the Competent Authority is carried out irrespective of the inspector's role with the Tax Administration.

[20] Article 4 of EU Council Directive.

The Complaint shall be submitted to the Croatian Competent Authority in Croatian and English language. The enclosed documents drafted in foreign language have to be translated to Croatian and English languages. The Croatian Competent Authority shall acknowledge receipt of the complaint within 2 months from the receipt of the complaint, and also inform the Competent Authorities of the other Member States concerned of the receipt of the complaint.

3.1.1. Time limit for making a complaint

In accordance with Article 3(1) of the EU Council Directive, the taxpayer shall submit within 3 years from the receipt of the first notification of the action resulting in, or that will result in, the question in dispute, regardless of whether the affected person has recourse to the remedies available under the national law of any of the Member States concerned.

3.1.2. Minimum information required for a valid complaint

In accordance with the EU Council Directive, the complaint shall only be accepted if the affected person making the complaint provides the Competent Authorities of each of the Member States concerned with the following information:

- the name(s), address(es), tax identification number(s) and any other information necessary for identification of the affected person(s) who presented the complaint to the Competent Authorities and of any other person concerned;
- The tax period concerned;
- details of the relevant facts and circumstances of the case (including details of structure of the transaction and of the relationship between the affected person and the other parties to the relevant transactions, as well as any facts determined in good faith in a mutual binding agreement between the affected person and the tax administration, where applicable) and more specifically, the nature and the date of the actions giving rise to the question in dispute (including, where applicable, details of same income received in the other Member State and of inclusion of such income in the taxable income in the other Member State, and details of the tax charged or that will be charged in relation to such income in the other Member State), as well as the related amounts in the currencies of the Member States concerned, with a copy of any supporting documents;
- reference to the applicable national rules and to the agreement or convention that provide for the elimination of double taxation of income (where more than one agreement or convention is applicable, the affected person making the complaint shall specify which agreement or convention is being interpreted in relation to the relevant question in dispute);
- the following information provided by the affected person who presented the complaint to the Competent Authorities, together with copies of any supporting documents:
  i. an explanation of why the affected person considers that there is a question in dispute;
  ii. the details of any appeals and litigation initiated by the affected person regarding the relevant transactions and of any court decisions concerning the question in dispute;
  iii. a commitment by the affected person to respond as completely and quickly as possible to all appropriate requests made by a Competent Authority and to provide any documentation at the request of the Competent Authorities;
  iv. a copy of the final tax assessment decision in the form of a final tax assessment notice, tax audit report or other equivalent document leading to the question in dispute and a copy of any other documents issued by the tax authorities with regard to the question in dispute where relevant;
  v. information on any complaint submitted by the affected person under another mutual agreement procedure or under another dispute resolution procedure and an express commitment by the affected person that he will abide by the provisions of EU Council Directive.

- any specific additional information requested by the Competent Authorities that is considered necessary to undertake the substantive consideration of the particular case.

The taxpayer must undertake to respond as completely and quickly as possible to requests by the Competent Authority for further information.

The Competent Authorities of each of the Member States concerned may request the information referred to in item 3.1.2 of this document within 3 months from the receipt of the complaint, and the taxpayer shall reply within 3 months of receiving the written request. A copy of this reply shall also be sent simultaneously to the Competent Authorities of the other Member States concerned. Additional written requests for information may be submitted during MAP in accordance with Article 4 of EU Council Directive, if Competent Authorities find this necessary.

3.1.3. Accepting/rejecting the complaint

The Croatian Competent Authority issues a decision on accepting or rejecting the complaint within six months from the receipt of the complaint, or within six months of receipt of all the information referred to in item 3.1.2 of this document, whichever is later. It shall inform the taxpayer and Competent Authorities of other states of its decision, without any delay.

The Croatian Competent Authority may decide to reject the complaint where:

- the complaint does not contain the information referred to in Article 3(3) of the Directive;
- there is no question in dispute;
- complaint was not submitted within the time limit of three years referred to in Article 3(1) of the Directive or
- complaint refers to income, profits or capital earned before the tax year commencing on 1 January 2018.

If the request is rejected, the Croatian Competent Authority will provide the taxpayer with the reasons for its decision.

The affected person shall be entitled to appeal against the decision of the Croatian Competent Authority and/or respective legal remedy against the decision of the Competent Authorities of other Member States concerned in accordance with national rules where all Competent Authorities of the Member States concerned have rejected the complaint. An affected person who exercises this appeal right shall be barred from making a request under Article 6(1)(a) of the EU Council Directive:

1. while the rejection decision is still appealed before the administrative courts and/or respective legal remedy against the decision of the Competent Authorities of other Member States concerned in accordance with national rules;

2. where the rejection decision or dismissal of an action in an administrative dispute, and/or rejection decision or dismissal delivered on an appropriate appeal against the decision of Competent Authorities of other Member States concerned in accordance with their national rules can still be further appealed under the appeal procedure or

3. when a rejection decision has been confirmed under the procedure in item 1 of this paragraph, but it is not possible to derogate from the decision of the relevant court or other judicial bodies in any of the Member States concerned.

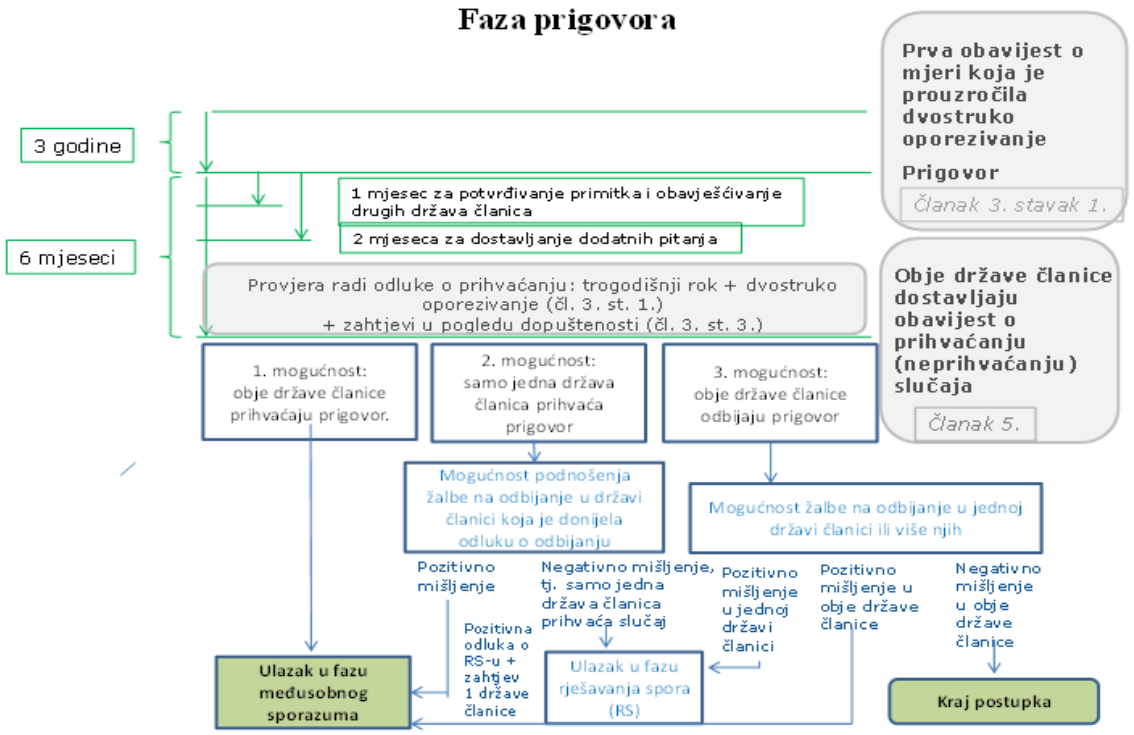
Where the appeal right has been exercised and/or respective legal remedy against the decision the

Competent Authorities of other Member States concerned in accordance with their national rules, the decision of the competent court of the Member State shall be considered.

Where the Croatian Competent Authority has not taken a decision on the complaint within the time provided for, it shall be deemed to be accepted by that Competent Authority.
An affected person may withdraw a complaint, of which it shall simultaneously submit a written notification of withdrawal to each of the Competent Authorities of the Member States concerned. When the Croatian Competent Authority receives such a notification, it shall inform the other Competent Authorities of the Member States concerned of the termination of proceedings without delay. In addition, if for any reason a question in dispute ceases to exist, the Croatian Competent Authority shall inform the taxpayer without delay

Within the period of 6 months from the receipt of a complaint, or within 6 months of the receipt of the information referred to in item 3.1.2 of this document, whichever is later, Croatian Competent Authority may decide to resolve the question in dispute on a unilateral basis, without involving the other Competent Authorities of the Member States concerned. In such case, the taxpayer and other Competent Authorities are notified without delay, following which, the proceedings under the EU Council Directive shall be terminated. Also, procedures will be terminated where the Competent Authority of other Member State concerned notifies the Croatian Competent Authority that it has decided to resolve the dispute unilaterally.

Where the Competent Authority is not capable to resolve the dispute unilaterally, the dispute shall be resolved by MAP.



3.2. MAP

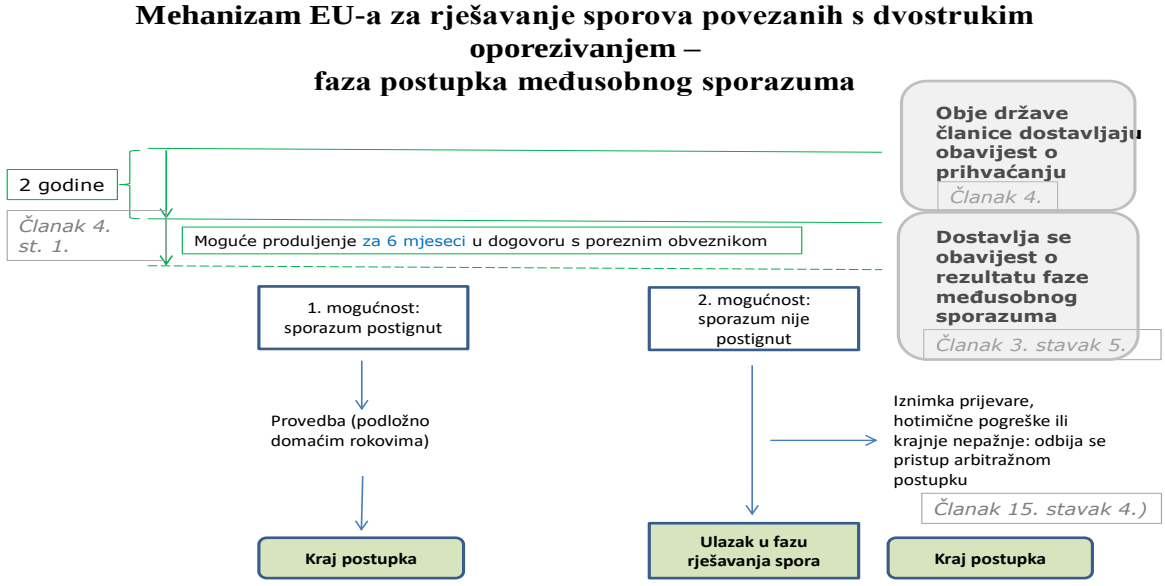
In accordance with Article 4 of EU Council Directive, where the Competent Authorities of the Member

States concerned accept a complaint, they shall endeavour to resolve the question in dispute by MAP within 2 years, starting from the last notification of a decision of one of the Member States on the acceptance of the complaint. The period of 2 years may be extended by up to 1 year if the requesting Competent Authority provides written justification to all other Competent Authorities of Member States.

Once the Competent Authorities of the Member States have reached an agreement within the provided period, the Competent Authority of each of the Member States concerned shall, without delay, notify the taxpayer. Such a decision is binding on the Competent Authority and enforceable by the taxpayer, subject to them, within 60 days from the receipt of the decision:

- accepting the decision and
- renouncing the right to any other remedy. Where proceedings regarding such other remedies have already commenced, the decision shall only become binding and enforceable once the affected person has provided evidence to the Competent Authorities of the Member States concerned that action has been taken to terminate those proceedings. The decision shall then be implemented without delay, irrespective of any time limits prescribed by the Croatian national law.

Where the Competent Authorities of the Member States concerned have not reached an agreement on how to resolve the question in dispute within the provided period, the Croatian Competent Authority shall inform the taxpayer indicating the general reasons for the failure to reach agreement.



3.3. Dispute resolution by the Advisory Commission

Upon a request made by the taxpayer, an Advisory Commission shall be set up if the Competent Authorities fail to reach an agreement within the period of two years where:

a) the complaint submitted by such taxpayer was rejected by at least one Competent Authority, but not all of the Competent Authorities of Member States; or
b) the Competent Authorities of the Member States concerned had accepted the complaint that was submitted by the taxpayer but failed to reach an agreement on how to resolve the question

in dispute by MAP within the time limit provided.

The taxpayer may only make such a request if, in accordance with any applicable national rules, no appeal can be made and/or appropriate remedy, no appeal is pending or the affected person has formally renounced his right of appeal. The taxpayer shall make the request to set up an Advisory Commission in writing, not later than 50 days from the date of receipt of the notification on accepting/rejecting the complaint[21] (item a)) or 50 days from the date of receipt of the notification on failing to reach an agreement on how to resolve the question in dispute within the time limit provided[22] (item b)) or 50 days from the date of delivery of the decision by the relevant court to reject the complaint by all the Competent Authorities[23] as the case may be. The Advisory Commission shall be set up not later than 120 days from the receipt of the written request and its chair shall inform the affected person thereof without delay.

The Advisory Commission set up in the case of item (a) shall adopt a decision on the acceptance of the complaint within 6 months from the date of its establishment. It shall notify the Competent Authorities of its decision within 30 days of the adoption thereof, the MAP shall be initiated at the request of one of the Competent Authorities. The Competent Authority concerned shall notify the Advisory Commission, the other Competent Authorities concerned and the taxpayer of that request. Where none of the Competent Authorities has requested initiation of the mutual agreement procedure within 60 days of the date of the notification of the decision of the Advisory Commission, the Advisory Commission shall provide an opinion on how to resolve the question in dispute. Also, in the case specified under item b), the Advisory Commission shall deliver an opinion on how to resolve the question in dispute.

If an Advisory Commission is not set up within the period provided, the taxpayer may apply in written form to the President of Administrative Court in Zagreb to set up the Advisory Commission.

The Advisory Commission shall consist of one president, one representative of each Competent Authority concerned and one independent person of standing nominated from the list.[24] This is a list of persons nominated by Member States (each shall nominate at least three such individuals) who are deemed competent and independent, and who can act with impartiality and integrity.

3.3.1. The Alternative Dispute Resolution Commission

The Competent Authorities of the Member States concerned may agree to set up an alternative dispute resolution commission instead of an Advisory Commission to deliver an opinion on how to resolve the question in dispute. The Competent Authorities of the Member States may also agree to set up an Alternative Dispute Resolution Commission in the form of a committee that is of a permanent nature (a 'Standing Committee'). An Alternative Dispute Resolution Commission, which delivers an independent opinion, where appropriate, may apply any dispute resolution processes or technique to solve the question in dispute in a binding manner, among other things the "final offer" arbitration process (otherwise known as 'last best offer' arbitration).

3.3.2. Interaction of Advisory Commission of Alternative Dispute Resolution Commission with taxpayers and Competent Authorities

For the purposes of the procedure, under an agreement between the Member State Competent Authorities, any information, evidence or documents with relevance to taking the final decision in the

[21] Article 3(5) of EU Council Directive.
[22] Article 4(3) of EU Council Directive.
[23] Article 5(3) of EU Council Directive.
[24] Article 9 of EU Council Directive.

dispute, may be submitted to the Commission The Advisory Commission or Alternative Dispute Resolution Commission forwards a written request to Competent Authorities or taxpayers concerned for the delivery of necessary documentation. Competent Authorities may refuse providing such information where administrative measures contrary to domestic legislation would be necessary, where such information is unobtainable, where such information cover business secrets an where disclosing of information might be contrary to public order.

Taxpayers have the right to appear or be represented, that is, participate in the procedures concerned, and are obliged to do so at the written request of the Commissions.

3.3.3. Opinion and final decision of Advisory Commission or Alternative Dispute Resolution Commission

Advisory Commission or Alternative Dispute Resolution Commission shall deliver their opinions to Competent Authorities of Member States concerned no later than six months from the day of their establishment. Where the Advisory Commission or the Alternative Dispute Resolution Commission find that the question in dispute is such that more than six months would be needed to deliver the opinion, such time limit may be extended by three months.

The Competent Authorities concerned shall agree on how to resolve the question in dispute within 6 months of the notification of the opinion of the Advisory Commission or Alternative Dispute Resolution Commission. The Competent Authorities may take a decision which deviates from the opinion of the Advisory Commission or Alternative Dispute Resolution Commission. However, if they fail to reach an agreement as to how to resolve the question in dispute, they shall be bound by that opinion.

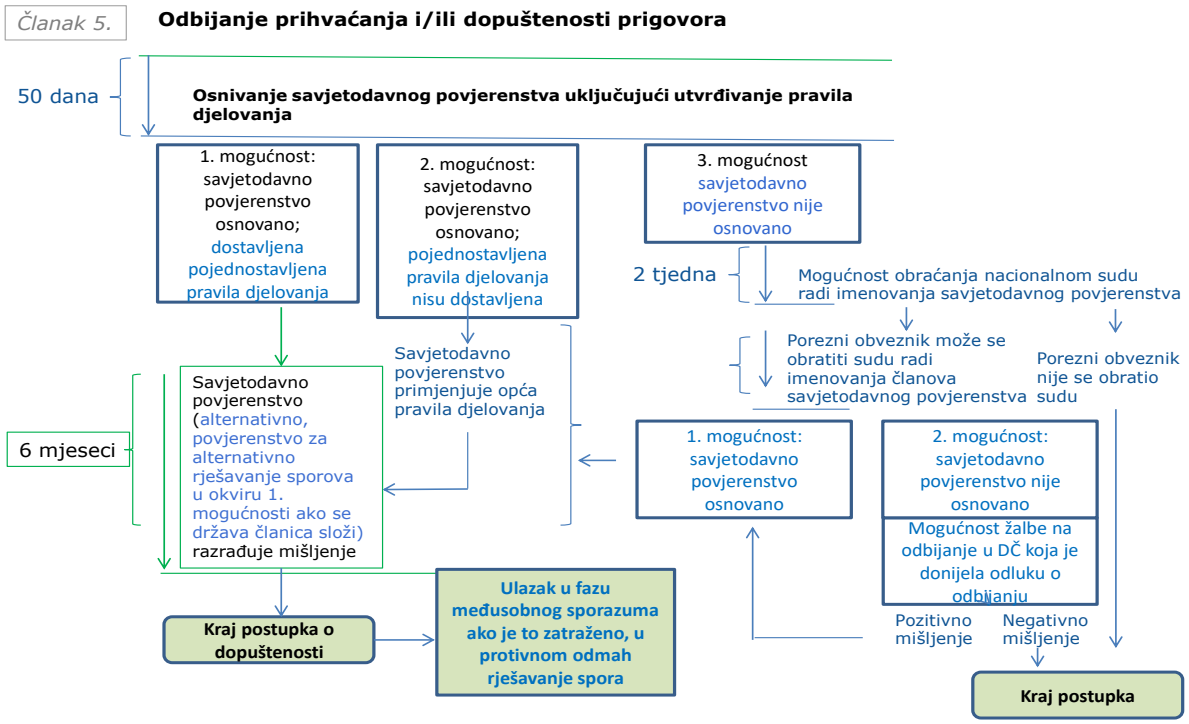
The final decision, although binding on the Member State, shall not constitute a precedent, and shall be implemented subject to the taxpayer renouncing the right to any domestic remedy within 60 days from the date when the final decision was notified.

3.3.4. Costs of proceedings

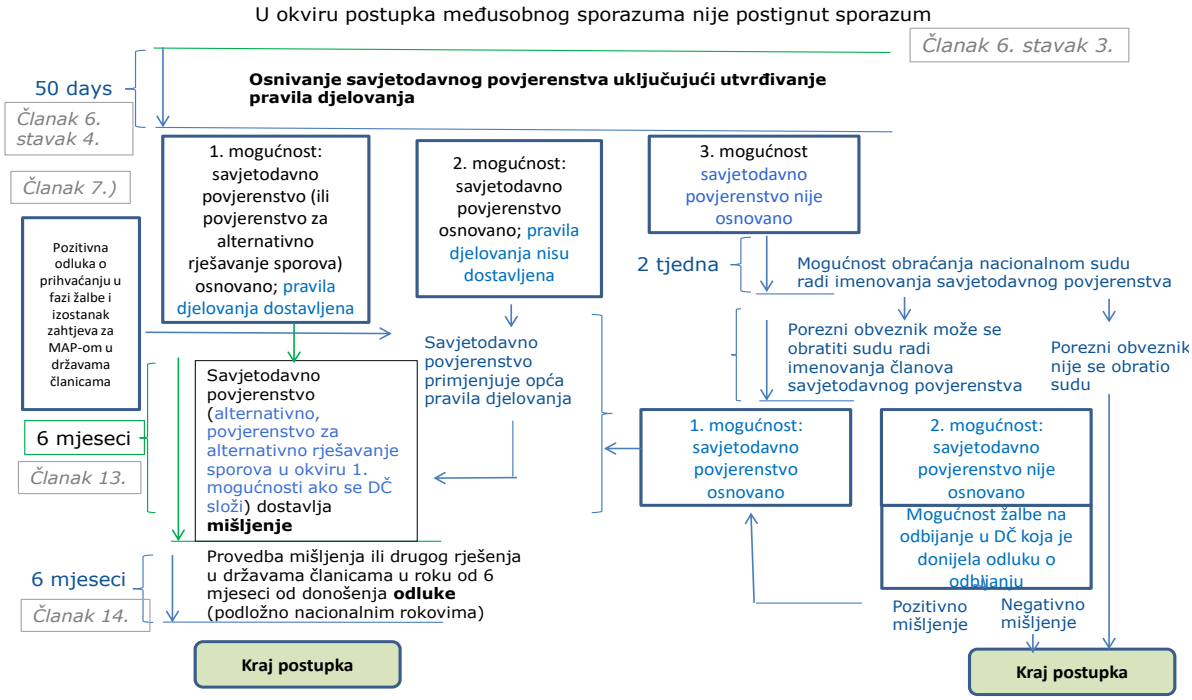
The costs of proceedings shall be shared equally among the Member States, unless the Competent Authorities have agreed otherwise. The costs shall be the expenses of the independent persons of standing, which are to be an amount equivalent to the average of the usual amount reimbursed to high-ranking civil servants of the Member States concerned; while the fees of the independent persons are to be limited to EUR 1,000.00 per person per day for every day on which the Commission meets (whether it is Advisory Commission or Alternative Dispute Resolution Commission).

Costs that are incurred by the taxpayer in connection to the proceedings shall not be borne by the Republic of Croatia. In addition, where the taxpayer has withdrawn the complaint, or the Advisory Commission decided that the relevant Competent Authorities have reasonably rejected the complaint, all costs of proceedings shall be borne by that taxpayer.

Faza rješavanja spora (odluka o prihvaćanju i dopuštenosti)



Faza rješavanja spora (uklanjanje dvostrukog oporezivanja)



3.4 Interaction with domestic legal remedies

The fact that the action of a Member State that gave rise to a question in dispute has become final under national law shall not prevent the taxpayer from having recourse to the procedures provided for in this Directive.

Referring the question in dispute to mutual agreement procedure or dispute resolution procedure shall not prevent a Member State from initiating or continuing judicial proceedings or proceedings for administrative and criminal penalties in relation to the same matters. Taxpayers may have recourse to the remedies available to them under the national law of the Member States. However, where the taxpayer has commenced proceedings to seek such a remedy, the terms of periods for accepting or rejecting the complaint[25], or initiating MAP[26] shall commence from the date on which a judgement delivered in those proceedings has become final or on which those proceedings have otherwise been definitively concluded or where the proceedings have been suspended.

Where a final decision on a question in dispute has been rendered in the Republic of Croatia, before the Advisory Commission or the Alternative Dispute Resolution Commission has delivered its opinion to the Competent Authorities of the Member States concerned, the Competent Authority of the relevant Member State concerned is to inform the other Competent Authorities of the Member States concerned and the Advisory Commission or the Alternative Dispute Commission of the effect of the decision of the court.

The submission of a complaint shall put an end to any other ongoing proceedings under the mutual agreement procedure or dispute resolution procedure under an agreement or convention that is being interpreted or applied in relation to the relevant question in dispute.

By way of derogation from Article 6 of the EU Council Directive, the Republic of Croatia will deny access to the dispute resolution procedure under that Article in cases where penalties were imposed in the Republic of Croatia in relation to additional determined income, profit or capital for tax fraud, wilful default and gross negligence.

The Republic of Croatia may deny access to the dispute resolution procedure under Article 6 of the EU Council Directive where a question in dispute does not involve double taxation, while the Competent Authority shall inform, without delay, the taxpayer and the Competent Authorities of the other Member States concerned of denying the access to the dispute resolution procedure.

3.5. Confidentiality

The information submitted to the Competent Authority in connection with the complaint, MAP, or dispute resolution procedure will be treated as confidential in accordance with the provisions of the General Tax Act ("GTA") and the provisions of the EU Council Directive.

Article 3(4) of EU Council Directive prescribes that national laws regarding the protection of information and the protection of trade, business, industrial or professional secret or trade processes shall apply, while Article 13 of the EU Council Directive prescribes the obligations of secrecy and professional secrecy under the national legislation of each of the Member States concerned in relation to information they receive in their capacity as members an Advisory Commission or Alternative Dispute Resolution Commission.

[25] Article 3(5) of EU Council Directive.
[26] Article 4(1) of EU Council Directive.

Appendix 1.: Contact details for submitting a MAP request under a DTA, the EU Arbitration Convention and/or EU Council Directive

- **Transfer pricing and attribution of profits to a permanent establishment MAP requests**

Requests for MAP assistance that relate to matters of transfer pricing or the attribution of profits to a permanent establishment are dealt with by the Tax Administration – Central Office, Legislation, Education and International Cooperation Division, Double Taxation Avoidance Department, and should be addressed to:

Tax Administration
Central Office
Legislation, Education and International Cooperation Division
Double Taxation Avoidance Department
Boškovićeva 5, Zagreb
e-mail: su_pis@porezna-uprava.hr

- **Non-transfer pricing MAP requests**

Requests for non-transfer pricing MAP cases, that is cases that are not related to transfer pricing and attribution of profits to a permanent establishment, are dealt with by the Tax Administration – Central Office, Legislation, Education and International Cooperation Division, Double Taxation Avoidance Department, which is also the contact point for such cases. Requests should be addressed to:

Tax Administration
Central Office
Legislation, Education and International Cooperation Division
Double Taxation Avoidance Department
Boškovićeva 5, Zagreb
e-mail: su_pis@porezna-uprava.hr

Appendix 2.: Information and documentation required to be submitted with a request for MAP assistance under a DTA, the EU Arbitration Convention and/or EU Council Directive

Information and documentation submitted with a request for MAP should be provided in hard copies, in Croatian language. For MAP requests relating to transfer pricing and the attribution of profits to a permanent establishment, as well as other MAP requests should be sent to the Tax Administration – Central Office, Legislation, Education and International Cooperation Division, Double Taxation Avoidance Department. Refer to Appendix 1 for contact information.

The information that must be included with a request for a MAP presented under either a relevant DTA are as follows[27]:

- identity (name, address, OIB (personal identification number), date of birth, contact data) of the taxpayer covered by MAP request and other parties in the relevant transaction;
- the tax periods concerned;
- details of the relationship between the taxpayer and other parties to the relevant transaction;
- the legal basis for the request, i.e. the relevant DTA, including the provision(s) of the specific article(s) which the taxpayer considers is not being correctly applied by either one or both Contracting States (indicating which state and the contact details of the relevant person(s) in that state);
- facts and circumstances of the case (including any documentation to support these facts such as financial statements and company legal agreements, the taxation year(s) or period(s) and covered amounts, in both local and foreign currency);
- an analysis of covered issues (supported with relevant documentation, for example, tax assessment notices, tax audit report or equivalent document leading to the alleged double taxation, evidence of tax paid (where applicable), a copy of the final decision concerning the amount of tax in the form of a final tax assessment decision, tax audit report or other similar document leading to the question in dispute and a copy of any other documents issued by the tax authorities with regard to the question in dispute, where relevant, including the taxpayers' interpretation of the application of the specific tax treaty provision, to support its basis for making a claim that the provision of the relevant tax treaty is not correctly applied by either one or both Contracting States;
- whether the MAP request has been submitted to another authority under another instrument enabling the dispute resolution mechanism related to DTAs (if yes, this should be clearly stated in the request in addition to the date of submission, name and title of the person, or department of the authority receiving such a MAP request. A copy of such submission should be provided, unless both MAP requests are completely identical);
- whether the issues presented in the MAP request have been previously addressed, for example, in an advance ruling, APA, settlement agreement or by any tax court, or information of any complaints by the taxpayer in accordance with another MAP procedure or dispute resolution procedure. This includes details of any appeals or litigation procedures initiated by the taxpayer or the other parties to the relevant transactions. If yes, a copy of these rulings, agreements or any court decisions concerning the case should be provided;
- taxpayers' statement that they will respond as completely and quickly as possible, providing wholly accurate and complete information, to all reasonable and appropriate requests made by the Competent Authority and to have documentation at the disposal of Competent Authorities;
- any other information or documentation requested by the Competent Authority. Responses to

[27]Where applicable, taxpayers should ensure that a statement authorizing a person to make a MAP request on their behalf is provided.

requests for additional information should be complete and submitted within the time stipulated in the request for such information or documentation.

In order for a dispute resolution request to be considered a valid request under the Arbitration Convention, the request submitted to the Competent Authority should specify at least:

- the identification of the taxpayer/enterprise (name, address, OIB) of the submitting Member State and the other parties to the relevant transactions;
- the tax period concerned;
- details of the relevant facts and circumstances of the case (including relationship between the enterprises and other parties to the relevant transaction);
- copies of any tax assessment notices, tax audit reports or equivalent documents leading to the alleged double taxation;
- details of any appeals and litigations initiated by the taxpayer or other parties to the relevant transactions and any other court decision relevant to the case;
- an explanation by the taxpayer of why it considers that the principles of the Arbitration Convention have not been observed.

In accordance with the EU Council Directive, the complaint shall only be accepted if the affected person making the complaint provides the Competent Authorities of each of the Member States concerned with the following information in Croatian and English languages:

- the name(s), address(es), tax identification number(s) and any other information necessary for identification of the affected person(s) who presented the complaint to the Competent Authorities and of any other person concerned;
- the tax periods concerned;
- details of the relevant facts and circumstances of the case (including details of structure of the transaction and of the relationship between the affected person and the other parties to the relevant transactions, as well as any facts determined in good faith in a mutual binding agreement between the affected person and the tax administration, where applicable) and more specifically, the nature and the date of the actions giving rise to the question in dispute (including, where applicable, details of same income received in the other Member State and of inclusion of such income in the taxable income in the other Member State, and details of the tax charged or that will be charged in relation to such income in the other Member State), as well as the related amounts in the currencies of the Member States concerned, with a copy of any supporting documents;
- reference to the applicable national rules and to the agreement or convention that provide for the elimination of double taxation of income (where more than one agreement or convention is applicable, the affected person making the complaint shall specify which agreement or convention is being interpreted in relation to the relevant question in dispute);
- the following information provided by the affected person who presented the complaint to the Competent Authorities, together with copies of any supporting documents:
  i. an explanation of why the affected person considers that there is a question in dispute;
  ii. the details of any appeals and litigation initiated by the affected person regarding the relevant transactions and of any court decisions concerning the question in dispute;
  iii. a commitment by the affected person to respond as completely and quickly as possible to all appropriate requests made by a Competent Authority and to provide any documentation at the request of the Competent Authorities;
  iv. a copy of the final tax assessment decision in the form of a final tax assessment notice, tax audit report or other equivalent document leading to the question in dispute and a copy of any other documents issued by the tax authorities with regard to the question in dispute where relevant;

v. information on any complaint submitted by the affected person under another mutual agreement procedure or under another dispute resolution procedure and an express commitment by the affected person that he will abide by the provisions of EU Council Directive.

- any specific additional information requested by the Competent Authorities that is considered necessary to undertake the substantive consideration of the particular case.

The taxpayer must undertake to respond as completely and quickly as possible to requests by the Competent Authority for further information.