OECD releases second report on improving tax dispute resolution in Latvia 3/37/21

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In July 2021 the OECD released Latvia's Stage 2 Peer Review Report findings obtained in peer-reviewing its progress with implementing the Minimum Standard of BEPS[1] Action 14 for improving tax dispute resolution mechanisms. Stage 2 aims to monitor the implementation of recommendations arising from Latvia's Stage 1 Peer Review Report. Overall the Stage 2 report finds that Latvia has eliminated most of the flaws found in the Stage 1 report.

Background

In October 2016 the OECD released peer review documents relating to Action 14, which forms the basis of the peer review and supervisory process for the Mutual Agreement Procedure ("MAP"). The assessment methodology prescribes detailed procedures and guidelines for a two-tier approach to the peer review and supervisory process. Stage 1 included reporting on how an EU member state implements the Minimum Standard based on its MAP rules and how this framework is put into practice. Stage 2 involves revising measures the participants have taken to eliminate any flaws found in the Stage 1 peer review.

The Stage 2 report is divided into four parts (preventing disputes, availability and access to MAP, resolution of MAP cases, and implementation of MAP agreements), with their key findings outlined below.

Preventing disputes

Latvia has signed and ratified the Multilateral Instrument to achieve full compliance with all four key areas of effective dispute resolution under the Action 14 Minimum Standard. Based on this instrument, several double tax treaties have been or will be modified to meet the Action 14 Minimum Standard requirements. If the treaties are not to be amended when the Multilateral Instrument takes effect, Latvia reported that it plans to update all the treaties through bilateral negotiations to make them compliant with the Action 14 Minimum Standard requirements.

Overall, Latvia meets the Action 14 Minimum Standard for preventing disputes and has implemented a bilateral advance pricing agreement, which can also be rolled back to previous periods.

Availability and access to MAP

Latvia meets some of the Action 14 Minimum Standard requirements for the availability of MAP. According to the report, Latvia provides access to MAP in all relevant cases, although it has not received a new MAP request since 1 September 2018. It is important to note that Latvia has not set up a documented process of bilateral consultation or notification for situations where Latvia's competent authority believes that taxpayers' objections in a MAP request are invalid. Finally, Latvia has yet to publish its guidance on the availability of MAP and how it applies this procedure in practice, although it has issued detailed procedural rules on MAP together with other EU member states, arising from Council Directive 2017/1852 of 10 October 2017.

Resolution of MAP cases

Latvia meets nearly all of the Action 14 Minimum Standard requirements for resolving MAP cases. Latvia's competent authority operates completely independently from the tax authority's audit unit and takes a pragmatic approach to ensure that MAP cases are resolved effectively and efficiently. Based on performance indicators (i.e. tax revenues retained in Latvia) that are used to evaluate the competent MAP authority's staff in charge, it was found that no issues arose in the period under review.

The only issue with resolving MAP cases was their duration averaging over 24 months. So Latvia should carefully monitor whether its resources will ensure the timely resolution of pending and future MAP cases.

Implementation of MAP agreements

The Stage 2 report finds that Latvia meets the Action 14 Minimum Standard for implementing MAP agreements, with its competent authority monitoring how those agreements are performed.

Findings

The release of Latvia's Stage 2 Peer Review Report suggests that the parties are actively working to achieve tax certainty in multinational enterprises' cross-border transactions. While tighter checks are expected to increase the risk of double taxation, the fact that tax authorities can be evaluated by other countries' competent authorities is to be welcomed by multinational enterprises seeking access to an efficient and timely MAP.

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[1] The OECD project aimed at preventing tax base erosion and profit shifting