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## **Blueprints for enhancing the protection of taxpayers' rights in cross-border tax procedures**

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### **Introduction**

The slow pace of progress made in respect of tax dispute settlement mechanisms under the auspices of cross-border situations.

Indeed, the actual facts prove that cross-border situations and two examples give evidence of this statement.

First, as demonstrated by our research,<sup>1</sup> even where taxpayers enjoyed rights for taxpayers before information was exchanged by means of mutual assistance,<sup>2</sup> such protection was abolished in connection with the peer-review procedures conducted by teams of tax authorities from other countries in order to verify the effective compliance with the global standards of tax transparency.

Second, the path towards global tax transparency keeps mutual assistance as a matter of exclusive competence for tax authorities that does not admit direct involvement of the persons whose rights it affects.

Mutual agreement procedures remain a fairly non-transparent instrument in the hands of tax

also against the interest of one or more States, as well as when both tax authorities reach an agreement that substantially deviates from what a given taxpayer would find fair.

Second, various factors





More in general, we believe that the involvement of the taxpayer in the procedure allows a common understanding of facts and law finding, which may produce some very positive effects for tax authorities, since the taxpayer would be bound by his position and statements in all phases of the procedure.

Not differently from what happens now in respect of Article 25.2 OECD MC tax authorities may be unable to reach a satisfactory solution in certain cross-border tax cases. In such case they shall endeavour to resolve the case by mutual agreement with the competent authority of the other Contracting State.

We believe that the reasons for which tax authorities are unable to reach a satisfactory solution should be included in a formal notice to the taxpayer. Such document should also faithfully reproduce the factual position put forward by the taxpayer, and indicate the different positions as compared to that held by tax authorities and the reasons for which the tax authorities were unable to reach a satisfactory solution.

Such act should be notified to the taxpayer, who should have the opportunity to appeal it in conformity with the legal remedies available under the domestic procedural rules of such country. However, for the purpose of avoiding undue delays in the continuation of the mutual agreement procedure, the appeal of the notice should follow procedural rules that allow for expedited amendments without infringing the *audita alteram partem* principle.

The failure by the taxpayer to appeal should not be considered as his acquiescence to the position held by tax authorities, but rather as a recognition that the respective position and facts indicated in the notice duly correspond to the ones that were held during the procedure until that moment.

The involvement of the taxpayer in the second step of the mutual agreement procedure should

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The dynamics of mutual agreements initiated by the taxp



proposal could be easily justified by the need to comply with the requirements of primary European Union law and the current developments that are taking place at the level of interpretation also in connection with the case law on the EU Charter.

## **2. Mutual assistance in exchange of information and tax collection**

In line with our vision of cross-border tax procedures, also those concerning mutual assistance should evolve in a way that allows a direct involvement of taxpayers with a view to allowing them to have effective international legal remedies available for an *ex ante* protection of their rights.

defence in a way that allows him to have access to all relevant information held by tax authorities and to be promptly informed of any action connected with tax collection concerning him.

Also in this case we propose an adaptation of the existing procedures without requiring the introduction of substantial changes to treaty provisions.

carry out effective tax audits. For this reason tax authorities should be waived from the obligation to inform the taxpayer in the presence of objective and motivated suspicions or in respect of schemes that have repeatedly been the object of infringements by one or more taxpayers. This carve-out should also apply for cases of requests to supply information in the framework of mutual legal assistance treaties, especially in cases of potential criminal relevance.

cases of mutual assistance on tax collection.

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In addition to the arguments already raised in our previous research,<sup>11</sup> we believe that mutual assistance in collection of taxes should be supplemented by three mechanisms that enhance the protecti

The first two consist in the obligation to notify taxpayers of the request for assistance in tax

framework that allows taxpayers to have an effective legal remedy in respect of all action that can affect their personal sphere, since we consider this to be a fundamental rights in all civilised nations.

### **3. Conclusions**