

## ROYAL DECREE 1794/2008

Regulation on Mutual Agreement Procedures in direct taxation matters passed by Royal Decree 1794/2008, of 3 November. Consolidated text.

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# REGULATION ON MUTUAL AGREEMENT PROCEDURES IN DIRECT TAXATION MATTERS

## TITLE I

### Common Rules

#### Article 1. Scope

1. In accordance with the provisions of the First Additional Provision of the Consolidated Text of the Non Resident's Income Tax Act, approved by Royal Legislative Decree 5/2004, of 5 March, the following Mutual Agreement Procedures (MAPs) are hereby implemented:

- a) MAPs provided for in the conventions for the avoidance of double taxation (DTCs) in force in Spain, applicable to cases where a person considers that the actions of one or both of the contracting States result or will result for that person in taxation not in accordance with the DTC.
- b) MAPs provided for in Convention 90/436/EEC of 23 July 1990, on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.
- c) Mechanisms to resolve disputes between Member States arising from international conventions and treaties that provide for the elimination of double taxation of income and, where applicable, capital, referred to in Council Directive (EU) 2017/1852 of 10 October 2017, on tax dispute resolution mechanisms in the European Union.

2. This Regulation applies to persons entitled thereto pursuant to the relevant international conventions or treaties, and to the Spanish Administration.

#### Article 2. Competent authority

1. The competent authorities to carry out the functions herein regulated are:
  - a) In general terms, the Directorate General for Taxation (*Dirección General de Tributos*).
  - b) The State Tax Administration Agency (*Agencia Estatal de Administración Tributaria – AEAT*) with respect to MAPs regulated under Title III hereof, as well as those under Title II and IV related to the implementation of the Articles of DTCs dealing with business profits in relation to permanent establishments and with associated enterprises.

MAP cases falling under joint competence shall be coordinated by the Directorate General for Taxation.

It is within the competent authority's remit to advancing MAP proceedings.

2. Contact details of the competent authority shall be displayed on the respective internet portals.

**Article 3. Taxpayer's rights and duties**

1. During the processing of a MAP case referred to in Article 1, the taxpayer shall provide the Tax Administration with any data, report, record and underlying documentation that may prove useful to resolve the case. That information must be faithful and complete and shall be timely provided to the Tax Administration as required.

2. Taxpayers have the right to request the initiation of the MAPs set forth in Article 1, to be informed of the state of the proceedings and to appear before the Tax Administration to explain their case.

**Article 4. Obligation to communicate to certain competent courts or tribunals and administrative bodies that a MAP request has been admitted**

For the purposes of the provisions of Section 7 of the first additional provision of the Consolidated Text of the Non-Residents Income Tax Act, passed by Royal Legislative Decree 5/2004 of 5 March, and the provisions of the ninth additional provision, Section 2, second paragraph of Act 29/1998, of 13<sup>th</sup> July, regulating the jurisdiction of administrative tribunals, the competent authority referred to in Article 2 of this Regulations shall inform the competent administrative or judicial body that a MAP request has been admitted, if that administrative or judicial body is simultaneously hearing a review procedure affecting any elements of the tax liability covered by the MAP.

**Article 5. Relationship between the different MAPs governed by this Regulation**

In their request for MAP assistance, taxpayers shall state which of the MAPs governed by this Regulation may apply to them.

In cases where during the conduct of a MAP other than that provided for in Title IV of this Regulation, the taxpayer submits a MAP assistance request under Chapter I of Title IV of this Regulation, concerning the same matter, the first mentioned MAP shall be closed on the date on which any of the competent authorities of the Member States concerned first receives that request.

The start date of that new MAP shall be the date of receipt of that request.

**Article 6. Stages of the MAPs**

1. MAPs governed by this Regulation shall comprise the following stages:
  - a. Initiation
  - b. Proceedings
  - c. Closing
  - d. Implementation
2. Stages a) and d) are governed by their specific regulations and, supplementary, by the tax regulations, where relevant.

## TITLE II

**Mutual Agreement Procedures provided for in the Conventions for the Avoidance of Double Taxation (DTCs) applicable in Spain, intended to eliminate taxation not in accordance with DTCs.**

### CHAPTER I

**Rules governing MAPs initiated before the Spanish competent authority in relation to actions taken by the Spanish Tax Administration.**

#### *Section 1. Initiation*

##### **Article 7. Legitimacy**

As long as a DTC in force in Spain so provides, any person which is a resident of Spain within the meaning of the relevant DTC, and who considers that the actions taken by the Spanish Tax Administration result or may result for that person in taxation not in accordance with the provisions of the DTC, may submit their case to the competent authority.

##### **Article 8. Time limits**

The request to initiate the MAP case shall be submitted before the deadline laid down in the relevant DTC, running from the day following the date of the tax assessment or equivalent action notice that results or may result in taxation not in accordance with the DTC.

##### **Article 9. Request**

1. The request letter shall be addressed to the competent authority and shall contain at least the following relevant information:

- a) Full name, address, tax identification number (TIN) and any other identifying data of the MAP applicant and of any other parties concerned in the transactions under revision.
- b) The name of the foreign tax administration concerned.
- c) The specific Article of the DTC that the taxpayer asserts not being correctly applied and the taxpayer's construction thereof, explaining the reason why he/she considers that there is basis for that claim.
- d) The taxation years or assessment periods concerned.
- e) Detailed description of the relevant facts and circumstances of the case. In particular, the following must be included:
  - 1° the related amounts, in the currencies of the States concerned;
  - 2° details of the relationship, situations or structure of the transactions between the persons concerned;
  - 3° the nature and the date of the actions giving rise to the MAP

including, where appropriate, details of that same income received in the other State concerned, its inclusion in the taxable base thereof, and data on the tax charged or to be charged on that income in that other State.

- f) Details of any administrative or judicial appeal filed by the MAP applicant or by any other party concerned, as well as any decision or judgment given on the same matter.
  - g) A statement on whether the taxpayer has made a prior request for assistance to any of the competent authorities concerned on the same or a similar issue, under a MAP regulated in this Regulation.
  - h) A statement on whether the request includes any issue that may be regarded as covered by an Advance Price Agreement (APA) or similar procedure.
  - i) Commitment by the MAP applicant to reply as fully and promptly as possible to any request made by the Tax Administration and to make available to the Tax Administration any document relating to the case.
  - j) Date and signature of the MAP applicant or that person's representative.
2. The request shall be accompanied with copy of documentation supporting the information referred to in paragraph 1, and in particular:
- a) In cases relating to adjustments made on related transactions, the documentation required under the Corporation Income Tax Regulation approved by Royal Decree 634/2015, of 10<sup>th</sup> July.
  - b) Where available, copy of the tax assessment, notice thereof, and any report issued by the tax auditing office or equivalent unit, in connection with the case.
  - c) Copy of any decision taken or agreement reached by the other State's authorities that affects that MAP.
  - d) Should the taxpayer be represented, documentary proof of representation.
3. The request letter addressed to the competent authority shall be submitted via the general registry of the Administration of the addressed competent authority, under the conditions laid down in the relevant regulations.
4. Within two months of the registration date, the MAP applicant shall be sent acknowledgement thereof, and the competent authorities of the other States concerned shall be informed within four weeks of that registration date.

#### **Article 10. Amendments**

Within three months of the date on which the request is registered as received by the competent authority, its contents may be examined and the taxpayer may be requested to remedy any error found or to submit any missing documentation referred to in Article 9 of these Regulations. Clarification and further information may also be requested to resolve any doubt that may arise in reviewing the documents provided.

Within three months of receiving notice of the request, the MAP applicant shall submit the documentation or amend any error so communicated. Failure to comply with the request shall result in the cancellation of proceedings and the request shall be held as non-filed.

**Article 11. Acceptance of the request**

1. Within six months from the receipt of the MAP request or from the date of receipt of the information or documentation supplied upon request as set forth in Article 10, the competent authority will decide on whether to grant or deny access to MAP. That decision shall be notified to the taxpayer and to the competent authorities of the other States concerned. The positive silence mechanism applies once that term has elapsed.

2. The request to initiate a MAP may be denied, with justification, including without limitation, in the following cases:

- a) Where there is no DTC in force that includes an Article dealing with mutual agreement procedures.
- b) Where the request has been filed after deadline or by a person not entitled to it.
- c) Where the MAP is not relevant, as the issue raised concerns internal law and not a divergence or discrepancy in the implementation of the DTC.
- d) Where the MAP request deals with a matter already addressed in a MAP previously requested by the same taxpayer and on which the competent authorities reached an agreement, or which the taxpayer has waived.
- e) Where the request to amend and/or to complete the information is met within deadline, but the defects or omissions are not remedied.

3. MAP access shall be granted in cases where:

- a) The Spanish competent authority considers that the request is justified, and finds itself able to arrive at a solution.
- b) The Spanish competent authority considers that the request is justified, and finds itself not able to arrive at a solution. In that case, it shall communicate the competent authority of the other State that MAP access has been granted, that the request was submitted within the time limit provided for in Article 8, and it will provide the other competent authority with the case documents. If the applicable Convention provides for the setting up of the advisory commission referred to in Article 13, the Tax Administration of the other Contracting State shall be requested to provide the date on which it received the documentation. That date shall be the starting date of the period for referring the case to the advisory commission, which shall be notified to the taxpayer.

4. For the purposes of the provisions of this Article, the competent authority may request any documentation and reports as it might deem appropriate.

## **Section 2. Proceedings**

### **Article 12. Conduct of the proceedings**

1. It is within the competent authority's remit to institute proceedings and to determine the Spanish position on the case.

MAPs falling under the joint competence of the Directorate General for Taxation and the AEAT, shall be coordinated by the Directorate General for Taxation, and the Spanish position shall be jointly established by both competent authorities.

2. In determining the Spanish position, the competent authority may request any documentation and reports as it might deem appropriate, which shall be submitted within 3 months of receipt of the request.

Unless otherwise specified in the request, in cases where during the MAP proceedings the competent authority requests additional information from the taxpayer, the latter shall submit that information within ten days from the day next following the notification of the request to the taxpayer. This time limit may be extended by five days at the request of the taxpayer. Failure to comply with such a request may result in the closing of the MAP case.

3. The Spanish competent authority will prepare its initial position paper on the case, which shall be transmitted to the competent authority of the other State.

4. The competent authorities shall exchange as many position papers as it may be necessary in pursuing an agreement.

### **Article 13. Advisory commission**

1. In cases where the relevant DTC provides for the possibility to set up an advisory commission, and a competent authorities' agreement has not been reached within the deadline laid down in the DTC, the taxpayer may request the competent authorities for the setting up of this advisory commission for it to decide on any pending issue.

2. The advisory commission shall be governed by the provisions of the relevant DTC and by any understanding bilaterally reached under a DTC providing for its existence.

3. In view of the decision taken by the advisory commission, the competent authorities shall reach an agreement in accordance with Article 16 on all matters raised in the case.

## **Section 3. Closing**

### **Article 14. Closing of MAP cases**

1. The MAP may be closed on any of the following grounds:

- a) Waiver, as provided for in Article 15.
- b) Where Article 11(3)(a) applies, by Decision of the Spanish competent

authority, in accordance with the provisions of Article 16.

- c) By agreement reached by the competent authorities of the States concerned, in accordance with the provisions of Article 16.

2. No appeal may be brought against a decision to close a MAP case, except those against the administrative act or acts arising therefrom.

**Article 15. Taxpayer's waiver**

1. Taxpayers may waive their MAP request by letter addressed to the relevant competent authority, upon which the proceedings shall be then considered closed and no further action shall be taken. Where there is more than one taxpayer, a waiver shall only apply to those who waive.

2. The decision to take no further action shall be communicated to the competent authority of the other State.

**Article 16. Closing of MAP cases by agreement between the competent authorities of the States concerned**

1. MAPs may be closed upon an agreement reached by the competent authorities of the States concerned.

2. Competent authority agreements not to eliminate double taxation or taxation not in accordance with the Convention may be reached, including without limitation, on the following grounds:

- a) Where the actions that gave rise to the MAP cannot be amended because they are time-barred under internal law and the applicable DTC.
- b) Where the competent authorities hold different interpretations of the DTC underpinned by differences in their respective internal laws.
- c) Where the taxpayer fails to provide the information and documents necessary to resolve the case or if the proceedings come to a halt for reasons attributable to the taxpayer.
- d) Where a Spanish court or tribunal, or those of other State concerned, has rendered its final judgement or equivalent decision, provided that the following conditions are met:
  - 1° That such judgement or equivalent decision refers to those elements of the tax liability that have been considered within the MAP; and
  - 2° Provided that, under the internal law of the State whose court or tribunal has rendered the judgment or equivalent decision, the competent authority is bound by that decision.

3. The agreement reached by the competent authorities shall be notified to the taxpayer.

4. The competent authority agreement to eliminate double taxation or taxation not in accordance with the DTC shall be implemented provided that, within 60 calendar days

of the day following the notification of the agreement, the taxpayer(s):

- a) Accept the contents thereof, and
- b) Waive their right to appeal or withdraw from any pending appeal concerning those elements of the tax liability that have been considered within the MAP.

In the event that the issues under consideration in the MAP process have already been appealed, the taxpayers must provide evidence of waiver within the 60-calendar days period referred to in the paragraph above.

5. The competent authority agreement shall be understood as rejected by taxpayers if, after notification thereof, the taxpayers:

- a) Formally reject it in writing, stating their disagreement with the contents thereof, or
- b) Within 60 calendar days from the day following notification thereof, do not expressly accept the contents of the agreement; or
- c) Within 60 days from the day following notification thereof, do not waive their right to appeal in relation to any issue settled by the MAP or, where applicable, do not withdraw from any pending appeal.

The competent authority shall communicate any such rejection to the competent authorities of the other States concerned and shall consider the case closed.

6. The agreement reached shall be implemented once it becomes final within the meaning of paragraph 3 of the first additional provision of the Consolidated Text of the Non-Residents Income Tax Act, approved by Royal Legislative Decree 5/2004, of 5 March.

7. The agreement between the competent authorities shall not set a precedent.

#### **Section 4. Implementation**

##### **Article 17. Implementation of the agreement**

1. Within one month from the date on which the agreement becomes final the AEAT -competent for its implementation- shall be informed thereof.
2. The agreement shall be implemented ex officio or on application by the interested party.
3. Its implementation by the AEAT shall take the form of a tax assessment per taxable year covered by the MAP. These assessments shall observe the regulations in force in each taxable year covered by the MAP.

In dealing with taxes not limited to taxable periods, the agreement shall be implemented by means of a tax assessment relevant to the time of chargeability of the tax for each taxable event covered by the MAP.

4. Notwithstanding the provisions of the preceding paragraph, the Spanish Tax Administration may deliver a single decision comprehensive for any tax assessment derived from the MAP so that the final amount is determined by the algebraic sum of said

tax assessments.

5. In cases where the Spanish Tax Administration has already charged to tax the taxable event dealt with in the MAP, the implementation of the agreement shall determine the amendment or annulment, as the case may be, of that first tax assessment.

6. The tax assessment arising from the implementation of the agreement shall include any interests for late payment accrued on the tax debt resulting from that implementation.

## CHAPTER II

### **Rules governing MAPs initiated before the other State's competent authority in relation to actions taken by the Spanish Tax Administration**

#### **Article 18. Rules governing the initiation, conduct of the proceedings and implementation**

1. For MAPs referred to in Article 1(1)(a) initiated before the other State's competent authority following an action taken by the Spanish Tax Administration, the case may be presented by:

- a) Residents of that other State within the meaning of the relevant DTC, that consider that the actions taken by the Spanish Tax Administration result or may result for that person in taxation not in accordance with the provisions of the relevant DTC.
- b) Nationals of that other State that consider that a discrimination issue has occurred within the meaning of the DTC.

2. The Spanish competent authority may reject a MAP request in the cases provided for in Article 11(2) of this Regulation. Likewise, it may request the amendments referred to in Article 10 from the date on which it becomes aware of the filing of a request.

3. Any actions to be taken by the Spanish competent authority, as appropriate, shall be governed by the provisions of Articles 12 to 17, both inclusive, and of Article 20 of this Regulation.

## CHAPTER III

### **Rules governing MAPs initiated before the other State's competent authority in relation to actions taken by the Tax Administration of that other State**

#### **Article 19. Rules governing the initiation, conduct of the proceedings and implementation**

1. For MAPs referred to in Article 1(1)(a) initiated before the other State's competent authority following an action taken by that other State's Tax Administration, the case may be presented by residents of that other State within the meaning of the relevant DTC, that consider that the actions taken by that other State's Tax Administration result or may result for that person in taxation not in accordance with the provisions of the relevant DTC. The Spanish competent authority may reject a MAP request in the cases provided for in Article 11(2) of this Regulation. Likewise, it may request the amendments referred to in Article 10 from the date on which it becomes aware of the filing of a request.

2. Any actions to be taken by the Spanish competent authority, as appropriate, shall be governed by the provisions of the following Articles in this Chapter and, lacking

specific provision in this Article, by Articles 12 to 17, both inclusive.

**Article 20.** *Communication of the starting date of the term to refer the case to the advisory commission*

In the case of MAPs initiated before the other State's Tax Administration, the Spanish competent authority shall communicate the other competent authority the date of receipt of the documents underpinning the case. That date shall serve as the starting date of the term to refer the case to the advisory commission.

**Article 21.** *Conduct of the proceedings and implementation*

1. It is within the competent authority's remit to institute proceedings and to determine the Spanish position on the case.

MAPs falling under the joint competence of the Directorate General for Taxation and the AEAT, shall be coordinated by the Directorate General for Taxation.

2. Upon receipt of the other State's proposal, the Spanish competent authority shall draw up its position on the case, which shall be communicated to the competent authority of the other State.

3. In determining the Spanish position, the competent authority may request any documentation and reports as it might deem appropriate, which shall be submitted within 3 months of receipt of the request.

#### CHAPTER IV

#### **Rules governing MAPs initiated before the Spanish competent authorities in relation to actions taken by the other State's Tax Administration**

**Article 22.** *Rules governing the initiation, conduct of the proceedings and implementation*

1. For MAPs referred to in Article 1(1)(a) initiated before the Spanish competent authorities following an action taken by the other State's Tax Administration, and on the basis of a DTC in force in Spain, residents of Spain within the meaning of the relevant DTC that consider that the actions taken by the other State's Tax Administration result or may result for that person in taxation not in accordance with the provisions of the relevant DTC may refer their case to the Spanish competent authority.

2. As well, nationals of Spain that consider that a discrimination issue has occurred within the meaning of the DTC may refer their case to the Spanish competent authorities.

3. Any actions to be taken by the Spanish competent authority, as appropriate, shall be governed by the provisions of Articles 7 to 17, both inclusive, with the particularities provided for in Article 21.

## TÍTULO III

### **Proceedings relating to the application of Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, of 23rd July 1990**

#### **Article 23. General rules**

1. The provisions of this Title shall apply where, failing to comply with the principles set out in Article 4 of Convention 90/436/EEC and for taxation purposes, profits which are included in the profits of an enterprise of a Contracting State are also included or are likely to be included in the profits of an enterprise of another Contracting State.
2. Companies liable, by final judgement, to a serious penalty within the meaning of Convention 90/436/EEC, as a result of actions giving rise to an adjustment of profits pursuant to Article 4 of that Convention, shall be precluded from the MAP provided for in this Title. In the case of Spain, the penalties for infringements referred to in paragraph 10 of the First Additional Provision of the Consolidated Text of the Non Resident's Income Tax Act, approved by Royal Legislative Decree 5/2004, of 5 March, are to be considered serious penalties.
3. An appeal lodged for administrative proceedings or before an administrative dispute tribunal in the running of a MAP, concerning a serious penalty referred to in paragraph above, shall trigger the automatic suspension of the MAP. The suspension will run from the filing of the first relevant appeal until a final decision or judgement is delivered on whether or not the penalty is to be applied. To these effects, the taxpayer shall communicate to the competent authority the filing of the appeal or the sentencing thereon within one month from the day following that filing or service of the decision or judgement.

## CHAPTER I

### **Rules governing MAPs initiated before the Spanish competent authorities in relation to actions taken by the Spanish Tax Administration**

#### **Article 24. Rules governing the initiation, conduct of the proceedings and implementation**

MAPs referred to in Article 1(1)(b) initiated before the Spanish competent authorities concerning actions taken by the Spanish Tax Administration shall be governed by Articles 9 to 17, both inclusive, with the exception of Articles 13 and 16(1)(c) and (d), with the particularities determined by the following Articles:

#### **Section 1. Initiation**

#### **Article 25. Legitimacy**

This MAP is available for request to companies resident of Spain and permanent establishments situated in Spain of companies resident of another Member States signatory to the Convention 90/436/EEC, as long they are in any of the situations set out in Article 4 of said Convention.

#### **Article 26. Time limits**

The request to initiate the MAP shall be filed before 3 years from the day following the tax assessment or equivalent action notice that results or may result in double taxation in accordance with the provisions of Article 1 of Convention 90/436/EEC.

#### **Article 27. Request**

1. The request letter shall be addressed to the competent authority and shall mention if other contracting States are concerned.
2. The request shall include the information and documents referred to in Article 9, except paragraph 1(c), which does not apply.

Additionally, the company shall include the reasons why it considers that the principles set out in Article 4 of Convention 90/436/EEC have not been observed. As well, the company must notify if it has been subject to a penalty even if it is not final. If the penalty was imposed after the request for initiation, the taxpayer will let it be known by the competent authority within one month, even if it is not final.

#### **Article 28. Acceptance of the request**

1. The initiation of the MAP shall be denied by reasoned refusal in the following circumstances:
  - a) The principles set forth in Article 4 of Convention 90/436/EEC are not met.
  - b) The request has not been filed within the time limits provided for in Convention 90/436/EEC or filed by a non-legitimized person.
  - c) Where, by final judgement, the person concerned is liable to a serious penalty within the meaning of Convention 90/436/EEC. In the case of Spain, the penalties and sanctions referred to in paragraph 10 of the First Additional Provision of the Consolidated Text of the Non Residents' Income Tax Act, approved by Royal Legislative Decree 5/2004, of 5 March, are to be considered serious penalties.
2. MAP access shall be granted in case where:
  - a) The Spanish competent authority considers that the request is justified, and finds itself able to arrive at a solution.
  - b) The Spanish competent authority considers that the request is justified, and finds itself not able to arrive at a solution. In that case, it shall communicate the competent authority of the other State that MAP access has been granted, that the request was submitted within the time limit provided for in Article 26, and it will provide the other competent authority with the case documents, where applicable. Likewise, it will notify the start date of the two-year period for reaching an agreement, following which, should the competent authorities fail to reach an agreement, the advisory commission referred to in Article 31 shall be set up. The decision to initiate the MAP shall be notified to the taxpayer, including the starting date of the two-year period.

**Article 29.** *Start date of the two-year period*

1. The two-year period prior to the second stage provided for in Convention 90/436/EEC starts on the latter of the following dates:

- a) the date of the tax assessment or equivalent action notice.
- b) the date on which the competent authority receives the request accompanied by the supporting information and documents mentioned in Article 27 above.

2. However, where the case has been submitted to administrative proceedings or brought before an administrative dispute tribunal, the initiation or suspension of the two-year period shall be regulated by Article 7 of Convention 90/436/EEC

**Section 2. Proceedings**

**Article 30.** *Conduct of the proceedings*

The Spanish competent authority shall draft its initial position on the case, which shall be conveyed to the competent authority of the other State.

**Article 31.** *Setting up and functioning of an advisory commission.*

1. If the competent authorities concerned fail to reach an agreement that eliminates the double taxation within two years from the date on which the case started in accordance with Article 29, they shall set up an advisory commission charged with delivering its opinion on how to eliminate the double taxation in question.

2. If the associated companies concerned so agree, the competent authorities may settle a period different from that referred to in paragraph 1.

3. The setting up, composition and functioning of the advisory commission, as well as the information to be provided and the participation of taxpayers and competent authorities, shall be governed by the provisions of Articles 9 and 10 of Convention 90/436/EEC.

**Article 32.** *Opinion of the advisory commission*

In accordance with Article 11 of Convention 90/436/EEC, the advisory commission shall deliver an opinion within six months from the date on which the matter was referred to it. The date of referral shall be that in which the commission receives all the relevant documents and information sent by the States concerned.

**Section 3. Closing**

**Article 33.** *Competent authorities' decision*

1. Within six months from the date on which the advisory commission delivered its opinion, the competent authorities shall, acting by common consent on the basis of Article 4 of Convention 90/436/EEC, take a decision that will eliminate the double taxation.

2. The competent authorities may take a decision that deviates from the advisory

commission's opinion.

3. No appeal shall be available against either the competent authorities' decision or the advisory commission's opinion, as the case may be, except those available against the administrative act or acts arising therefrom.

## CHAPTER II

### **Rules governing MAPs initiated before the other State's competent authority in relation to actions taken by the Spanish Tax Administration**

#### **Article 34. Rules governing the initiation, conduct of the proceedings and implementation**

1. For MAPs referred to in Article 1(1)(b) initiated before the other State's competent authority following an action taken by the Spanish Tax Administration, the case may be presented by any person meeting the circumstances set out in Articles 4 and 6 of Convention 90/436/EEC. Thus, these MAPs are available for request to companies resident of another Member State and permanent establishments situated in the territory of another Member State of a company resident of that other Member State, provided that that Member State is a signatory to the Convention 90/436/EEC.

2. The Spanish competent authority may reject the request to initiate a MAP in the cases listed in Article 28(1).

3. The proceedings shall be governed by the provisions of Articles 12 to 17, both inclusive, with the exception of Articles 13 and 16(2)(a) and (b), and with the particularities determined by Articles 30 to 33 concerning their conduct and implementation.

## CHAPTER III

### **Rules governing MAPs initiated before the other State's competent authority in relation to actions taken by the Tax Administration of that other State**

#### **Article 35. Rules governing the initiation, conduct of the proceedings and implementation**

For MAPs referred to in Article 1(1)(b) initiated before the other State's competent authority following an action taken by that other State's Tax Administration, the proceedings shall be governed by the provisions of the preceding Article as regards their initiation, and by the provisions of Articles 12 to 17 both inclusive, with the exception of Articles 13 and 16(2)(a) and (b), and with the particularities determined by Articles 31 to 33, and by Article 21, as regards their conduct and implementation.

## CHAPTER IV

### **Rules governing MAPs initiated before the Spanish competent authority in relation to an action taken by the other State's Tax Administration**

#### **Article 36. Rules governing the initiation, conduct of the proceedings and implementation**

For MAPs referred to in Article 1(1)(b) initiated before the Spanish competent authority following an action taken by the other State's Tax Administration, the proceedings shall be governed by the provisions of Articles 24 to 33, both inclusive, with the exception of Article 30, and by Article 21.

## TITLE IV

### Dispute resolution mechanisms referred to in Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union

#### CHAPTER I

##### Initiation

###### **Article 37. Legitimacy**

These mechanisms are available for request to any taxpayer meeting the following criteria:

- a) The taxpayer is a person resident of Spain or other Member State within the meaning of the relevant international conventions or treaties applicable in Spain that provide for the elimination of double taxation of income and, where applicable, of capital; and
- b) Whose taxation is directly affected by the actions taken by Spain or other(s) Member State(s), which result or may result in taxation not accordance with the provisions of the international conventions or treaties applicable in Spain that provide for the elimination of double taxation of income and, where applicable, of capital.

###### **Article 38. Time limits**

The request shall be submitted within three years from the receipt of the tax assessment notice or equivalent action, that results or will result in, taxation not in accordance with the provisions of the international conventions or treaties applicable in Spain that provide for the elimination of double taxation of income and, where applicable, of capital.

###### **Article 39. Rules governing the initiation**

The mechanisms referred to in Article 1(1)(c) shall be governed by the provisions of Articles 9, 10 and 11, inclusive, with the following particularities:

- a) The taxpayer shall simultaneously submit the request regulated by Article 9 with the same information to each competent authority concerned, unless that taxpayer is within the scope of Article 57 of this Regulation.

In the latter case, the request may be submitted solely to the Spanish competent authority, who, within two months of receipt at its registration office of such submission, shall simultaneously notify the competent authorities of all other Member States concerned thereof. The request shall be deemed to have been submitted to all Member States concerned by the taxpayer on the date of that notification.

- b) The notification between competent authorities referred to in Article 9(4) shall also include the language or languages they intend to use for their communications during the relevant proceedings.

- c) Applicants that receive a request in accordance with Article 10 shall simultaneously send copy of their reply to the competent authorities of the other Member States concerned.

Notwithstanding the foregoing, in cases where the taxpayer is within the scope of Article 57 of this Regulation, that reply may be submitted solely to the Spanish competent authority, who, within two months from the registration of such reply as received, shall simultaneously notify the competent authorities of all other Member States concerned thereof, and will send copy of the information submitted. The information shall be deemed to have been received by all Member States concerned on the date it was registered as received by the Spanish competent authority.

- d) Failure to comply with a request to remedy any error found or to submit any missing documentation may result in the cancellation of proceedings.

**Article 40. Acceptance of the request by the Advisory Commission**

1. Where the initiation of the mechanism has been rejected by at least one of the Member States concerned, but not by all of them, the taxpayer may request the competent authorities of the Member States concerned to set up an advisory commission pursuant to the provisions of Article 45.

The initiation of the mechanism by a Member State concerned shall be deemed to have been rejected in the following cases:

- a) If, in accordance with any national rules of the Member State concerned, no appeal may be brought against the rejection decision of the competent authority.
- b) If the rejection decision of the competent authority has been confirmed by final administrative or judicial decision.

2. A request for setting up an advisory commission may only be made if the following conditions are met:

- a) The right to appeal is time-barred;
- b) No appeal is pending;
- c) The taxpayer has formally waived his right to appeal, and
- d) The final administrative or judicial decision, if any, confirming the rejection decision of a competent authority, is not binding for the competent authority.

3. The request to set up an advisory commission shall be made in writing, no later than fifty days from the date of receipt of the notification of the latest decision granting access to the advisory commission in accordance with paragraph 1 of this Article. The advisory commission shall be set up no later than 120 days from the registration of such request as received by the competent authority, and once set up, its chair shall inform the taxpayer thereof without delay.

4. Notwithstanding the provisions of paragraph 1, in cases where the taxpayer is within the scope of Article 57 of this Regulation, the request to set up an advisory commission may be submitted solely to the Spanish competent authority, who, within

two months from the registration of that request as received, shall simultaneously notify the competent authorities of all other Member States concerned thereof. The request shall be deemed to have been submitted to all Member States concerned by the taxpayer on the date of that notification.

5. The advisory commission referred to in this Article shall adopt a decision on the acceptance of the request 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.

Where the right to appeal has been exercised, the decision issued by the Economic- Administrative Tribunal shall be considered for these purposes.

6. Upon confirmation by the advisory commission that all the requirements provided for in Article 9, and if appropriate Article 10, for the admission of a request have been satisfied, the mechanism shall be initiated at the request of one of the competent authorities. The requesting competent authority shall notify the advisory commission, the other competent authorities concerned and the taxpayer of that request. The two-year period provided for in Article 41 shall start from the date of the notification of the decision taken by the advisory commission of the acceptance of the MAP.

Where none of the competent authorities has requested initiation of the MAP 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 subject-matter of the MAP, as provided for in Article 51(1). In such a case, for the purposes of that Article, the advisory commission shall be deemed to have been set up on the date on which that 60-day period expired.

## **CHAPTER II**

### **Proceedings**

#### **Article 41. Conduct of the proceedings**

1. Where the competent authorities of the Member States concerned accept a request for assistance and they are not themselves able to arrive at a solution, they shall endeavour to resolve the subject-matter of the procedure by mutual agreement within 2 years, starting from the last notification of a decision of one of the Member States concerned on the acceptance of the request.

Notwithstanding the foregoing, where the taxpayer has appealed against the actions that result or may result in taxation not in accordance with the international conventions or treaties applicable in Spain that provide for the elimination of double taxation of income and, where applicable, on capital, that term shall start from the latter of the two following dates:

- a) The date specified in the preceding paragraph, or
- b) The date of suspension of the appeal.

The above-mentioned 2-year period may be extended by up to 1 year at the request of a competent authority of a Member State concerned to all of the other competent authorities of the Member States concerned, if the requesting competent authority provides written justification.

2. Subject to the provisions of this Chapter, the mechanisms referred to in Article

1(1)(c) shall be governed by the provisions of Article 12, with the following particularity:

Taxpayers that receive a request referred to in Article 12(2) second paragraph of this Regulation, shall simultaneously send copy of their reply to the competent authorities of the other Member States concerned.

Notwithstanding the foregoing, in cases where the taxpayer is within the scope of Article 57 of this Regulation, that reply may be submitted solely to the Spanish competent authority, who, within two months from the registration of such reply as received, shall simultaneously notify the competent authorities of all other Member States concerned thereof, and will send copy of the information submitted. The information shall be deemed to have been received by all Member States concerned on the date it was registered as received by the Spanish competent authority.

3. Where the competent authorities of the Member States concerned have not reached an agreement on how to resolve the subject-matter of the MAP within the period provided for in paragraph 1, the competent authority shall inform the taxpayer indicating the general reasons for the failure to reach agreement.

**Article 42.** *Request to set up an advisory commission to decide on the subject-matter of the MAP*

Where the competent authorities of the Member States concerned have not reached an agreement on how to resolve the subject-matter of the MAP within the period provided for in Article 41(1), the taxpayer may request the competent authorities to set up an advisory commission in accordance with the provision of Article 45.

That request shall be made in writing, not later than 50 days from the date of receipt of the notification under Article 41(3). The Advisory Commission shall be set up no later than 120 days from the date on which the request is registered as received by the competent authority, and once set up, its chair shall inform the taxpayer thereof without delay.

Notwithstanding the foregoing, in cases where the taxpayer is within the scope of Article 57 of this Regulation, that request may be submitted solely to the Spanish competent authority, who, within two months from the registration of such request as received, shall simultaneously notify the competent authorities of all other Member States concerned. The request shall be deemed to have been submitted to all Member States concerned by the taxpayer on the date of that notification.

**Article 43.** *Denial of access to the advisory commission*

1. The competent authority shall deny access to the advisory commission provided for in Article 42 in cases where:

- a) the serious penalties and sanctions referred to in paragraph 10 the First Additional Provision of the Consolidated Text of the Non Resident's Income Tax Act, approved by Royal Legislative Decree 5/2004, of 5 March, have been enforced by final judgment, or
- b) on a case-by-case basis, where the subject-matter of the MAP does not involve double taxation. In such a case, the competent authority shall inform the taxpayer and the competent authorities of the other Member States concerned without delay.

2. For the purposes of this Article, “double taxation” means the imposition by two or more Member States of taxes covered by a treaty or convention referred to in Article 1 in respect of the same taxable income or capital, when it gives rise to either:

- a) an additional tax charge;
- b) an increase in tax liabilities; or
- c) the cancellation or reduction of losses that could be used to offset taxable profits.

**Article 44. Information, evidence and hearings**

1. For the purposes of the procedure referred to in Articles 40(1) and 42, where the competent authorities of the Member States concerned agree, the taxpayer(s) may provide the advisory commission or the alternative Dispute Resolution Commission provided for in Article 48 of this Regulation with any information, evidence or documents that may be relevant for the decision.

The relevant commission may request the taxpayer and the competent authority to provide any information, evidence or document. However, those competent authorities may refuse to provide that information in any of the following cases:

- a) obtaining the information requires carrying out administrative measures that are against the national law;
- b) the information cannot be obtained under the national law;
- c) the information concerns trade secrets, business secrets, industrial secrets, professional secrets or trade processes;
- d) the disclosure of the information is contrary to public policy.

2. Taxpayers may, at their request and with the consent of the competent authorities of the Member States concerned, appear or be represented before the relevant commission, and they must do so upon request of that commission.

3. In accordance with the provisions of Article 95 of Act 58/2003 of 17 December, the General Tax Act, the members of the relevant commission shall be bound by the strictest and most complete confidentiality with respect to the fiscal data they become aware in their capacity as such, without prejudice to the application, where relevant, of the internal law of the other States concerned, within their own jurisdiction, concerning the information received during the conduct of the proceedings by the advisory commission set up pursuant to Articles 40(1) and 42. Taxpayers and, where applicable, their representatives shall undertake to treat any information (including knowledge of documents) that they receive during such proceedings as secret. The competent authority may request the taxpayers and their representatives to make a declaration to this effect.

**Article 45. Advisory commission**

1. The advisory commission referred to in Articles 40(1) and 42 shall have the following composition:

- a) one chair;

- b) one representative of each competent author concerned;
- c) one independent person of standing, who shall be appointed by each competent authority of the Member States concerned from the list referred to in Article 46.

If the competent authorities agree, the number of such representatives and independent persons of standing may be increased to two for each competent authority.

Where the option provided for in the preceding paragraph has been exercised, following the appointment of the independent person(s) of standing, a substitute shall be appointed for each of them, in the event that they are prevented from carrying out their duties.

2. The competent authority shall agree the rules for the appointment of the independent persons of standing with the competent authorities of the Member States concerned.

3. Where the rules for the appointment of independent persons of standing have not been agreed in accordance with paragraph 2, the appointment of such persons shall be carried out by drawing lots.

4. Except where the independent persons of standing have been appointed as provided in Article 47(1), the competent authority may object to the appointment of any particular independent person of standing for any reason agreed in advance between the competent authorities of the Member States concerned or if that person:

- a) belongs to or is working on behalf of one of the Tax Administrations concerned or was in such a situation at any time during the previous 3 years;
- b) has, or has had, a material holding in or voting right in the taxpayer's company, or is or has been an employee of or adviser to any taxpayer concerned, at any time during the last 5 years prior to the date of his appointment,;
- c) does not offer a sufficient guarantee of objectivity for the settlement of the issue or issues to be decided;
- d) is an employee with an enterprise that provides tax advice or otherwise gives tax advice on a professional basis, or was in such situation at any time during a period of at least 3 years prior to the date of his appointment.

5. The competent authority may request that a person of standing who has been appointed in accordance with paragraph 2 or 3, or his substitute, shall disclose any interest, relationship or any other matter that is likely to affect that person's independence or impartiality or that might reasonably create an appearance of bias in the proceedings.

6. For a period of 12 months after the decision of the advisory commission was delivered, an independent person of standing who is part of the advisory commission shall refrain from engaging in any of the grounds for objection mentioned in paragraph 4.

7. The representatives of the competent authorities and the independent persons of standing appointed in accordance with paragraph 1 of this Article shall elect a chair

from the list of persons referred to in Article 46. Unless the representatives of each competent authority and independent persons of standing agree otherwise, the chair shall be a judge.

**Article 46.** *List of independent persons of standing*

1. The list of independent persons of standing shall consist of all the independent persons of standing nominated by the Member States.

2. The Directorate General for Taxation and the State Tax Administration Agency (AEAT) shall, by mutual agreement, nominate at least three individuals who are competent, independent, and capable of acting with impartiality and integrity, to be part of the list of independent persons of standing. If, following their nomination, any of these persons falls within the grounds for objection mentioned in Article 45(4), the Directorate General for Taxation and the AEAT shall, by mutual agreement, decide on their replacement.

3. The Directorate General for Taxation shall notify the Commission of the names of the independent persons of standing nominated pursuant to the provisions of the preceding paragraph, and shall provide it with complete and up-to-date information regarding those person's professional and academic background, their competence, their expertise and any conflicts of interests that they may have. The notification shall specify which of those persons may be appointed as a chair.

4. The Directorate General for Taxation shall inform the Commission of any changes to the list of independent persons of standing without delay.

5. Where the Directorate General for Taxation objects, prior agreement with the AEAT, to an independent person of standing remaining in the abovementioned list for reasons of lack of independence, it shall inform the Commission and provide the appropriate evidence thereof.

Where applicable, objections to one of the independent persons of standing appointed by the Spanish authority, raised by another Member State, and supporting evidence thereof, shall be addressed to the Directorate General for Taxation. The latter, shall within 6 months take the necessary steps and decide whether or not to retain that person on the list, and shall notify the Commission accordingly without delay.

**Article 47.** *Appointments by the national appointing body*

1. If an Advisory Commission is not set up within the period provided for in Articles 40(3) and 42, the taxpayer may apply to the Central Economic-Administrative Tribunal for this to carry out the appointments required to set up the advisory commission.

Where the competent authority has failed to appoint the independent person of standing and a substitute, the taxpayer may request the Central Economic-Administrative Tribunal to appoint them from the list referred to in Article 46.

If the competent authorities of all Member States concerned have failed to appoint the independent persons of standing, the taxpayer may request the Central Economic-Administrative Tribunal, and, where applicable, the competent tribunal or national appointing body of the other Member States, to appoint the independent persons of standing from the list referred to in Article 46. Those independent persons of standing shall appoint the chair by drawing lots from that list, in accordance with Article 45(3).

The request referred to in this paragraph shall be addressed to the Spanish State when it is the Spanish competent authority who has failed to appoint the independent person of standing and a substitute. Where the MAP concerns to more than one taxpayer, those resident of Spain shall submit their request to the Spanish State.

For these purposes, the President of the Tribunal or the Head of such other body of the Tribunal as the President deems appropriate, shall make the appointment.

2. The taxpayer's request for the appointment of the independent persons of standing and their substitutes in accordance with paragraph 1 shall be within 30 days from the termination of the 120-day period provided for in Articles 40(3) and 42.

3. Pursuant to paragraph 1, and within 2 months from receipt of the request, the Central Economic-Administrative Tribunal shall make a decision on the appointment and notify the applicant thereof. Absent notification, after that deadline the request shall be understood as rejected. An appeal may be brought against that rejection before the competent administrative dispute tribunal.

The Central Economic-Administrative Tribunal shall inform the Spanish competent authority of the appointment, which in turn shall inform the competent authorities of the other Member States without delay. The Spanish competent authority may bring an appeal before the competent administrative dispute tribunal against that designation.

#### **Article 48. *Alternative Dispute Resolution Commission***

1. The competent authority may agree with the competent authorities of all the Member States concerned to set up an alternative dispute resolution commission (an "Alternative Dispute Resolution Commission"), instead of an Advisory Commission. The competent authority may also agree to set up an Alternative Dispute Resolution Commission in the form of a permanent committee.

2. Its composition, structure, dispute resolution techniques and functioning shall be agreed in accordance with Article 10 of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.

#### **Article 49. *Rules of functioning***

1. Within the 120-day period provided for in Articles 40(3) and 42, the competent authority shall notify the taxpayer of the following:

- a) the rules of functioning for the relevant commission;
- b) the date by which the opinion on the resolution of the MAP's subject-matter shall be adopted;
- c) references to any applicable provisions in a DTC, agreement or national law.

2. The rules of functioning shall be agreed between the competent authorities of the Member States concerned. These rules shall provide in particular:

- a) the description and the characteristics of the subject-matter of the MAP;
- b) the legal and factual questions to be resolved pursuant to the agreement

reached by the competent authorities of the Member States concerned;

- c) the form of the dispute resolution body, which shall be either an advisory commission or an alternative dispute resolution commission, as well as the type of process for any alternative dispute resolution, if the process differs from the independent opinion process applied by an advisory commission:
- d) the time frame for the procedure;
- e) the composition of the relevant commission (including the number and names of the members, details of their competence and qualifications, and disclosing any conflicts of interest of the members);
- f) the rules governing the participation of the taxpayer(s) and third parties in the proceedings, exchanges of memoranda, information and evidence, the costs, and any other relevant procedural or organisational matters;
- g) the logistical arrangements for the advisory commission's proceedings and delivery of its opinion.

If an Advisory Commission is set up to deliver an opinion under Article 40(1), only the information referred to points (a), (d), (e) and (f) of this paragraph shall be set out in the rules of functioning.

3. Where the competent authorities have not notified the rules of functioning to the taxpayer in accordance with paragraphs 1 and 2, the independent persons of standing and the chair shall complete the rules of functioning on the basis of the provisions laid down for this purpose by the European Commission and shall send them to the taxpayer within two weeks from the date on which the relevant commission was set up. Where the independent persons of standing and the Chair have not agreed on the rules of functioning or have not notified them to the taxpayer, the taxpayer may apply to the Central Economic-Administrative Tribunal in order to obtain an order for the implementation of the rules of functioning.

#### **Article 50. Costs of proceedings**

1. Except as provided in paragraph 2, and unless the competent authorities of the Member States concerned have agreed otherwise, Spain shall bear its part of the following costs to be shared equally among the Member States concerned:

- a) 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; and
- b) the fees of the independent persons, where applicable, which are to be limited to EUR 1 000 per person per day for every day on which the relevant commission meets.

In no case shall the costs incurred by the taxpayer be borne by the Spanish State.

2. Where the competent authorities of the Member States concerned agree, all costs referred to in paragraph 1(a) and (b), shall be borne by the taxpayer, provided that the taxpayer:

- a) waives the procedure in accordance with Article 53, or
- b) request the setting up of a commission under Article 40(1), and that commission decides that the relevant competent authorities were correct in rejecting the request.

**Article 51. *Opinion of the Commission***

1. The relevant commission shall deliver its opinion to the competent authorities of the Member States concerned no later than 6 months after the date on which it was set up.

This period may be extended by 3 months where the relevant commission considers that the subject-matter of the MAP is such that it would need more than 6 months to deliver an opinion. In that case, the relevant commission shall inform the competent authorities of the Member States concerned and the taxpayer of any such extension.

2. The relevant commission shall base its opinion on the provisions of the applicable DTC or international treaty referred to in Article 1(1)(c), as well as on the provisions of any applicable national tax rule of the Member States concerned.

3. The relevant commission shall adopt its opinion by a simple majority of its members. Where a majority cannot be reached, the vote of the chair shall determine the final opinion. The chair shall communicate the opinion to the competent authorities.

4. The opinion of the relevant commission shall be delivered in writing.

**CHAPTER III**

**Closing**

**Article 52. *Closing of MAPs***

MAPs shall be closed on any of the following grounds:

- a) Waiver by the person who requested the initiation of the MAP in accordance with Article 53 of this Regulation.
- b) Non-existence or removal of the subject-matter of the MAP.

In that case all the procedures provided for under this Title shall be closed with immediate effect, and the competent authority shall inform the taxpayer without delay of this state of affairs and of the underlying general reasons.

- c) Taxpayer's repeated failure to provide the additional information requested during MAP proceedings by any competent authority of any of the States concerned, upon prior consultation with the competent authorities of the other States.

- d) The delivery of final judgement by a Spanish court or tribunal or any equivalent decision of those of other State concerned, provided that the following conditions are met:

- (i) that such judgement or equivalent decision refers to those elements of

the tax liability that have been considered within the MAP; and

- (ii) provided that, under the internal law of the State whose court or tribunal has rendered the judgement or equivalent decision, the competent authority is bound by that decision.
- e) By decision taken by the Spanish competent authority, if the request appears to it to be justified and it is itself able to arrive at a solution in accordance with the provisions of Article 54 (3)(4) and (5).
- f) By agreement between the competent authorities of the Member States concerned, in accordance with the provision of Article 54.

#### **Article 53. Waiver**

For purposes of the provisions of Article 52(a) of this Regulation, the person who requested MAP assistance shall simultaneously submit written waiver to the competent authority of each Member State concerned. That notification shall close with immediate effect any MAP instituted under this Title. The competent authority shall inform the competent authorities of the other Member States concerned of the receipt of a waiver without delay.

Notwithstanding the foregoing, in cases where the taxpayer is within the scope of Article 57 of this Regulation, that waiver may be submitted solely to the Spanish competent authority, who, within two months from the registration of such notification as received, shall simultaneously notify the competent authorities of all other Member States concerned thereof. The notification shall be deemed to have been submitted to all Member States concerned by the taxpayer on the date of that notification.

#### **Article 54. Competent authority agreement**

1. MAPs may be closed by agreement thereto reached by the competent authorities.
2. Once the advisory commission or the alternative dispute resolution commission had delivered its opinion in accordance with Article 51, the competent authority agreement shall be reached within six months thereof. Otherwise, the competent authorities shall be bound by the relevant commission's opinion.
3. The competent authority shall, within 30 days, notify the taxpayer of the agreement reached, who may accept or reject it.
4. The agreement shall be binding on the competent authorities concerned subject to the taxpayer accepting its contents, pursuant to the provisions of Article 16 of this Regulation.
5. The competent authority agreement shall not constitute a precedent.

#### **Article 55. Publicity of the agreement**

1. The competent authorities may agree to publish in its entirety an agreement reached pursuant to the provisions of Article 54(2), subject to the consent of the taxpayers concerned.
2. Where the competent authorities or the taxpayer concerned do not consent to

publishing the agreement in its entirety, an abstract of that agreement shall be published instead. That abstract shall contain a description of the issue and subject-matter, the date and the tax periods involved, the legal basis, the industry sector, and a short description of the final outcome. It shall also include a description of the method of arbitration used, where applicable.

3. The competent authorities shall send the information to be published in accordance with the paragraph above to the taxpayer before its publication. No later than 60 days of the receipt of such information, the taxpayer may request the competent authorities not to publish information that concerns any trade, business, industrial or professional secret or trade process, or that is contrary to public policy.

3. The competent authorities shall notify the information to be published in accordance with paragraph 2 to the European Commission without delay.

## **CHAPTER IV**

### **Implementation**

#### **Article 56.** *Rules governing the implementation*

The agreement referred to in Article 54 shall be governed by the provision of Article 17 of this Regulation.

## **CHAPTER V**

### **Special provisions**

#### **Article 57.** *Special provisions*

For purposes of the provisions of Articles 39(a)(2<sup>nd</sup> paragraph), and (c)(2<sup>nd</sup> paragraph); Article 40(4); Article 41(2)(3<sup>rd</sup> paragraph); Article 42(3<sup>rd</sup> paragraph) and Article 53(2<sup>nd</sup> paragraph), it is understood that taxpayer means a fiscal resident of Spain who:

- a) is an individual; or
- b) is not a large undertaking and does not form part of a large group, within the meaning of Article 3(4) and (7) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013.

## **TITLE V**

### **Suspension of the tax collection**

#### **Article 58.** *Suspension of the tax collection*

1. MAPs mentioned in Article 1 allow the suspension of tax collection provided the following requirements are met:

- a) A MAP referred to in paragraph 1 has been requested.
- b) The tax collection cannot be suspended in administrative proceedings or before an administrative dispute tribunal.

- c) The guarantees set forth in paragraph 6(2) of the first additional provision of the Consolidated Text of the Non-residents Income Tax Act, passed by Royal Legislative Decree 5/2004, of 5th March, have been provided.

2. Unless otherwise provided in this Title, the Implementing Regulations of the General Tax Act 58/2003 of 17th December, concerning the referral for administrative review, passed by Royal Decree 520/2005, of March 13<sup>th</sup>, shall apply.

**Article 59. Taxpayers**

Any person requesting a MAP covered by Article 1 may request the suspension of the tax collection.

**Article 60. Competent bodies**

The request for suspension of the tax collection shall be filed before the competent collection body determined by the relevant organisational rule. This body shall be competent to attend and resolve any such request.

**Article 61. Request for suspension**

1. The suspension governed by this Title may be requested from the filing date of a request to initiate a MAP covered by Article 1.

2. Any request for suspension not tied to a MAP covered by Article 1 shall be ineffective and no explicit decision is needed to reject it.

3. Where a request for suspension is filed by a taxpayer while the suspension is not yet barred via administrative proceedings or administrative dispute tribunal, the request shall not have effects and is to be considered as not filed to all effects. In such case the suspension case shall be closed and the taxpayer notified thereof.

4. The suspension provided for in this Title is available for taxpayers barred from requesting it via administrative proceedings or before an administrative dispute tribunal.

5. The request shall be filed in writing and shall include the information and documents listed below. It may include as well any relevant information to support the taxpayer's claim that he qualifies for granting the suspension:

- a) Taxpayer's full name or trade name, tax identification number and address; if the request is filed by a representative, that representative's full identification data and proof of representation.
- b) Administrative body or agency to which the suspension request is addressed.
- c) The document setting out the guarantee provided, which shall be granted before the competent tax collection body and which shall include (i) the signatures of the grantors duly recognised by a public notary present therein or (ii) authenticated digital signatures. The electronic format of such document shall also be valid provided that the digitalization process secures its authenticity and integrity.
- d) The tax assessment, administrative proceeding or self-assessed tax return origin of the tax debt whose suspension is sought, including

identification data and dates of former proceedings.

- e) Copy of the MAP request filed under Article 1, and copy of the notice of acceptance of that request (if delivered at the time of filing the suspension request).
- f) Declaration to the effect that the suspension via administrative proceedings or administrative dispute tribunal is unavailable for the taxpayer.
- g) Taxpayer's address for notifications.
- h) Place, date and signature.

6. A suspension request not including the guarantee instrument or copy of the request to initiate a MAP pursuant to Article 1 (and its acceptance, as the case may be), shall have no effect and is to be considered as not filed to all effects. In such case the suspension case shall be closed and the taxpayer notified thereof.

7. If the suspension request does not meet the requirements set forth in paragraph 5 above, or the document setting out the guarantee is faulty or incomplete, the taxpayer shall be requested to remedy the deficiency within 10 days from the notification. Failure to comply with the request shall result in the cancellation of proceedings and the request shall be held as non-filed.

#### **Article 62. *Guarantee for suspension***

1. The guarantee shall cover the full amount of the tax debt plus surcharges if any at the time of the request for suspension. Said guarantees shall remain available for execution by the competent collection body.

2. Guarantees provided to administrative bodies or dispute tribunals shall remain valid for suspensions requested by the taxpayer under Article 61(4), provided that these guarantees are the same as those regulated under paragraph 1 of this Article. The document setting out the guarantee shall be made available to the competent collection body, as well as any guarantee extension, where necessary, for the suspension. In such cases, the suspension shall remain in effect during the determination of the MAPs covered by Article 1.

3. Variations in the amount of the tax debt resulting from the final agreement reached in a MAP covered by Article 1 shall affect the guarantee provided, binding it to the payment of the new tax debt including surcharges, if any.

#### **Article 63. *Effects of granting or rejecting the suspension***

1. Once a request to initiate a MAP covered by Article 1 has been accepted, requests for suspension that comply with the requirements set forth in Article 58(1)(b) and (c), and the provisions of Article 61, shall suspend the collection of the debt during the conduct of the proceedings. The suspension shall be understood as agreed from the date of the request and the taxpayer shall be informed thereof.

Should the document setting out the guarantee need rectification in accordance with Article 61(7), and the deficiency is remedied, the competent body shall agree the suspension with effect from the date of the request. The taxpayer shall be informed thereof.

The suspension shall not be granted in cases where the request to amend and/or to complete the document setting out the guarantee is met within deadline, but the defects or omission are not remedied. An appeal may be brought against that decision via internal administrative proceedings or before administrative dispute tribunals.

2. Where at the time of requesting the suspension, the request to initiate a MAP provided for in Article 1 has not yet been admitted or rejected, but it is eventually admitted, the competent body for collection shall agree the suspension with effects from the date it was requested. The taxpayer shall be informed thereof.

Where a request to initiate a MAP covered by Article 1 has been submitted and the competent authority has not yet decided whether or not to admit it, and where a request for suspension governed by this Title has also been submitted, and it complies with all the requirements provided for in Articles 58(1)(b) and (c), and the provisions of Article 61, the collection of the debt shall be suspended on a precautionary basis, provided that the request for suspension was filed while the tax debt was still payable within the statutory payment period. If all the circumstances are the same, except that the request for suspension is submitted during the enforced collection period, the procedure for enforced recovery shall take its course irrespective of the fact that any action in this regard might be subsequently reversed if the request to initiate a MAP provided for in Article 1 is finally admitted.

The relevant collection body will seek the competent authority's decision on the acceptance or rejection of the request to initiate a MAP provided for in Article 1, with a view to notify the suspension to the taxpayer.

If the request to initiate a MAP provided for in Article 1 is eventually rejected, the suspension shall be denied. No appeal may be brought against this decision.

### **TRANSITIONAL PROVISION**

**Transitional provision.** *Transitory regime for MAPs.*

The provisions of Articles 2, 9(1) and 19(1) of these Regulations shall apply to MAPs pending completion as of 1st January 2016.

### **FINAL PROVISION**

**Final provision.** *Authorisation to the Ministry of Economy and Finance.*

The Ministry of Economy and Finance is authorised to issue whatever provisions are necessary with a view to implement this Regulation.

### **TRANSITIONAL PROVISION OF ROYAL DECREE 399/2021, OF 8 JUNE AMENDING THIS REGULATION**

**Transitional provision.** *Transitory regime for MAPs*

1. MAPs initiated before the date of entry into force of this Royal Decree shall be governed by the rules in force before that date until their closing, except as provided for in the following paragraphs.

2. The regulation of the dispute resolution mechanisms with EU Member States referred to in paragraph 2 of the First Additional Provision of the consolidated text of the Non-Residents Income Tax Act, passed by Royal Legislative Decree 5/2004 of 5 March, applies to any request for the initiation of any such mechanisms filed on or after 1 July 2019 on matters dealt with in a MAP, referred to income or capital derived in a fiscal year beginning on or after 1 January 2018.

Likewise, where the competent authorities of the Member States concerned so agree, the regulation of those mechanisms shall apply to any request for initiation filed on or after 1 July 2019 on matters dealt with in a MAP covering income or capital derived before and after 1 January 2018. In the latter case, the applicable international convention or treaty must also provide for the setting up of an advisory commission.

3. The provisions of Article 16(3) and (4) of the Regulation, as amended by [new] Article 16 hereof, shall apply to MAPs pending completion by the entry into force of Royal Decree 399/2021 of 8 of June amending this Regulation.

UNOFFICIAL TRANSLATION