

INSIGHTS FROM RECENT KPMG SURVEY: KEY CONCLUSIONS ON THE EU ARBITRATION DIRECTIVE

Context

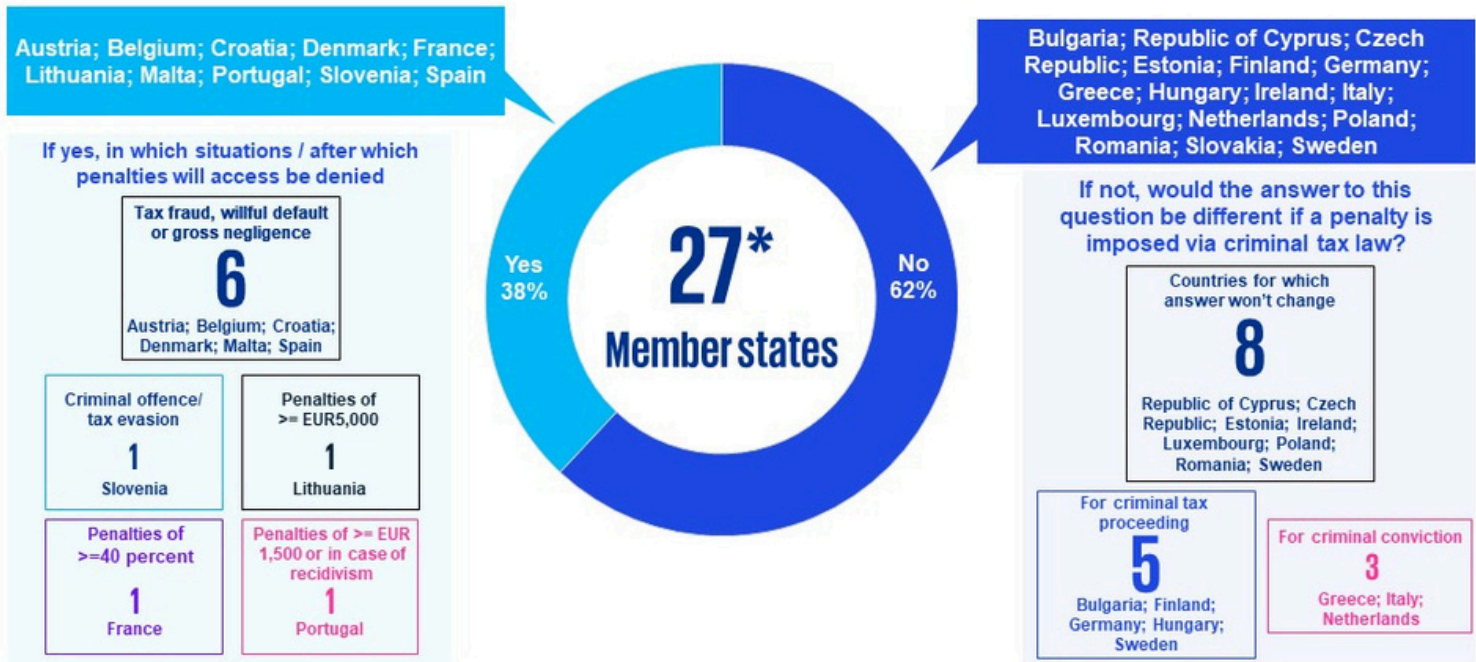
Double taxation occurs when multiple countries assert their right to tax the same income or profits of a taxpayer. This can happen, for example, due to different interpretations of Double Taxation Treaties or mismatches in national laws. Within the EU, the EU Arbitration Convention emerged as the pioneering effort to tackle these issues. However, the EU Arbitration Convention exclusively focuses on resolving transfer pricing disputes and a common complaint was that mutual agreement procedures frequently experience prolonged delays. Therefore, the Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union (the 'DRM') was adopted by Member States on October 10, 2017 and became applicable as of July 1, 2019.

The DRM enables enforceable and binding arbitration of disputes and is not restricted to transfer pricing disputes. The DRM has effectively set deadlines for Member States to resolve issues of double taxation. With the access to the arbitration committee acting as a strong enforcement mechanism, Member States are now more likely to reach agreements within a reasonable timeframe. These procedures ultimately lead to enforceable final decisions, streamlining the resolution process.

The European Commission has launched a public consultation aimed at gathering input from stakeholders regarding the DRM, with the objective of evaluating the DRM's functioning during its initial years of implementation. The KPMG Tax Controversy network, in cooperation with KPMG’s EU Tax Centre, conducted an internal survey across the network of KPMG firms based in Europe in order to collect key insights into the functioning of the DRM and so provide input to the European Commission. This blog identifies the key focus areas regarding the functioning of the DRM as revealed by the KPMG survey.

EU Arbitration Directive survey responses (1/4)

 Member states refusing access to the dispute resolution commission if penalties have been imposed

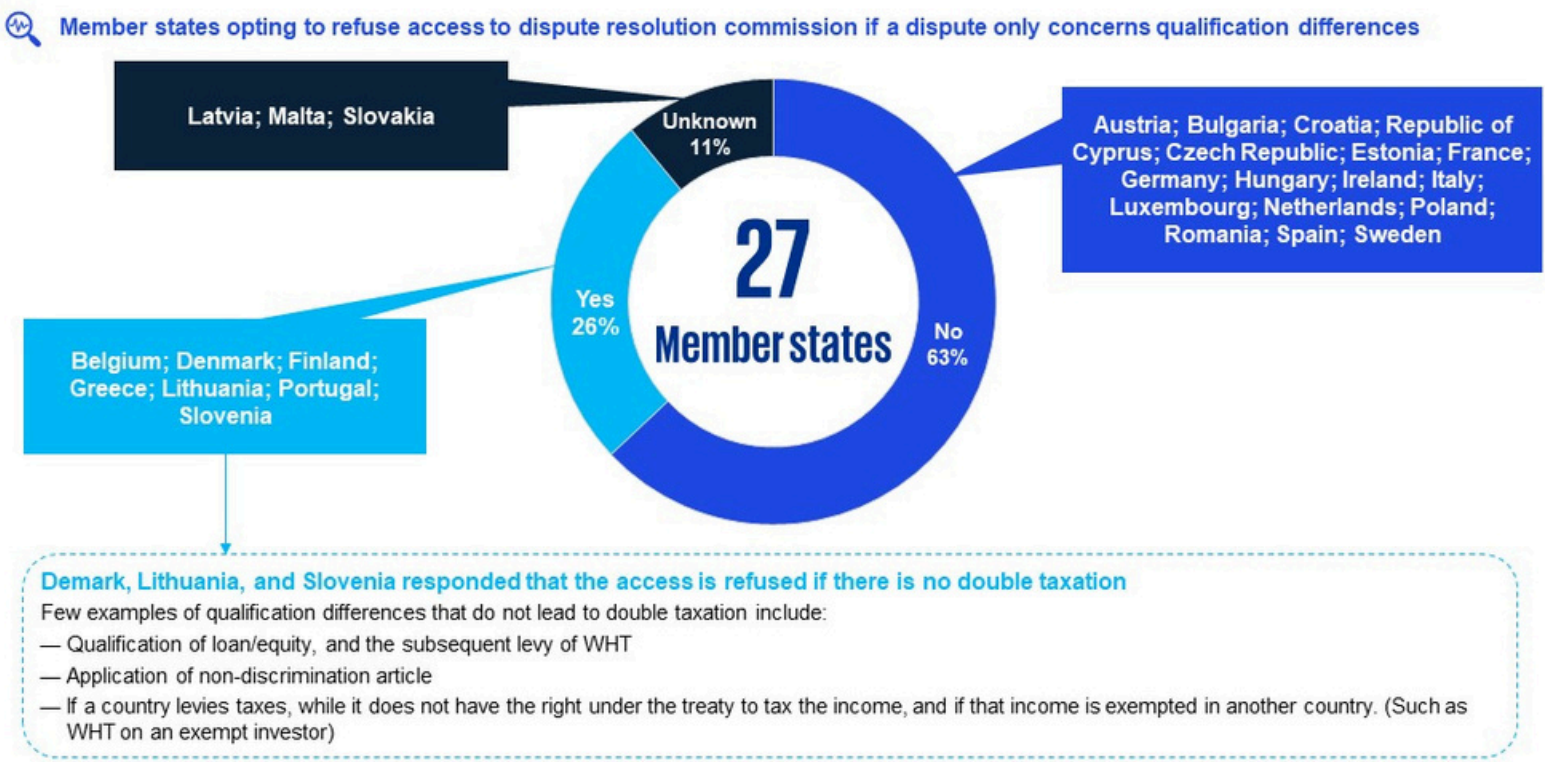


Note: (*) Latvia is excluded from the analysis for this slide, as no response was provided by the member state

KPMG Survey

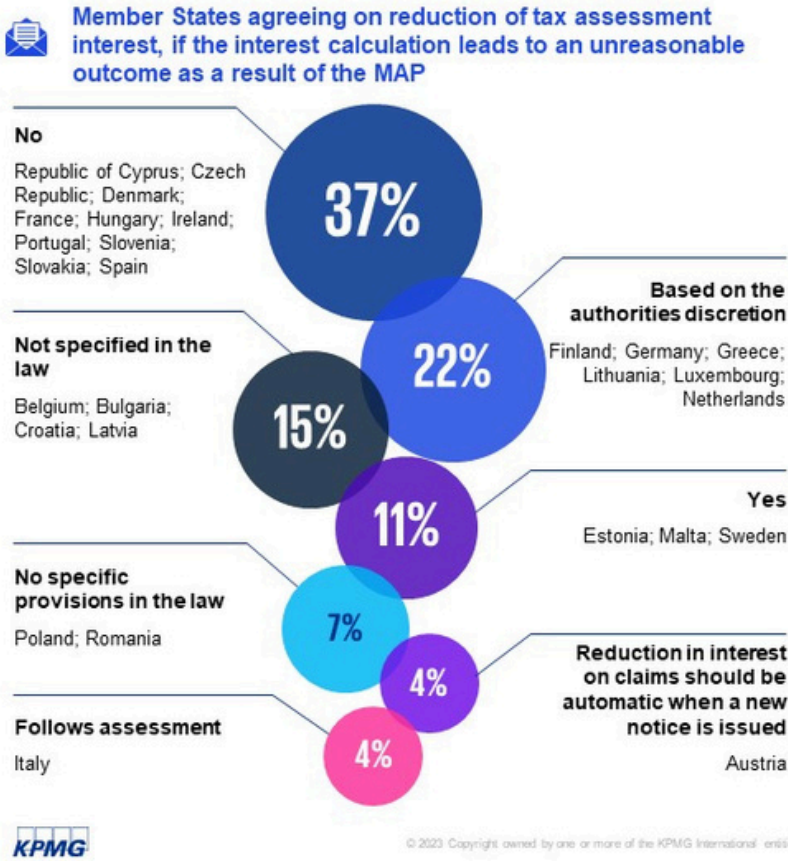
The survey revealed that the DRM has some shortcomings that need to be addressed. Firstly, the survey findings revealed that 38% of Member States refuse access to the arbitration committee when taxpayers face penalties. At the same time, Member States do not interpret these terms in a uniform way, which leads to uncertainty on access to the arbitration committee.

EU Arbitration Directive survey responses (2/4)



Finally, the survey findings revealed that interest accruing on taxes due is a significant concern for stakeholders. Not only can this interest accumulate substantially during lengthy mutual agreement proceedings, but its offset is not automatically included in any resolution of the dispute. Consequently, one of the Member States may impose a tax adjustment along with applicable interest. Simultaneously, the Member State relinquishing part of its taxing authority may not refund any previously received interest. Particularly in cases of significant financial stakes, the double payment of interest can amount to substantial sums. The DRM does not provide any solutions for this issue as it solely focuses on resolving double taxation.

EU Arbitration Directive survey responses (3/4)



If no interest will be reimbursed on the refund in a Member State, will interest will be charged on additional tax payable in another Member State

Percentage	Response	Countries
37%	Yes	Austria; Belgium; Republic of Cyprus; Denmark; Estonia; France; Malta; Portugal; Slovenia; Slovakia
29%	Not available	Finland; Greece; Ireland; Lithuania; Luxembourg; Netherlands; Poland; Sweden
15%	Not specified in the law	Bulgaria; Croatia; Czech Republic; Latvia
7%	No specific provisions in the law	Hungary; Romania
4%	Follows assessment	Italy
4%	Based on the authorities discretion	Germany
4%	No	Spain

Conclusion

In summary, the survey findings shed light on certain shortcomings within the DRM. Firstly, it's concerning that a significant portion of Member States (38%) opt to suspend arbitration when taxpayers face penalties, particularly in cases of tax fraud, willful default, or gross negligence. Additionally, the survey indicates that 26% of Member States refuse arbitration committee access when disputes involve qualification issues rather than double taxation matters. While such disputes may not always result in double taxation, they could lead to tax being erroneously imposed. Lastly, the substantial concern regarding interest accruing on taxes due presents a significant challenge. Despite its potential to accumulate during prolonged proceedings, the DRM lacks provisions for automatic offsetting in dispute resolutions. Consequently, the potential for double payment of interest poses considerable financial implications. Addressing these shortcomings will be crucial for ensuring the effectiveness and fairness of cross-border tax dispute resolution mechanisms within the EU.

KPMG’s Global Tax Dispute Resolution & Controversy Services team can help you find the best strategy for resolving double taxation by using the DRM or, with regard to the shortcomings of the DRM, by making use of other available mechanisms. If you have any questions, feel free to contact Rian Waaijer, Jens Lamberg Karreman or Aldo Mariani.



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