

APPROVED

by the Order No VA-57 of the Head of State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania of 12 July 2018

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THE RULES FOR THE INITIATION AND EXECUTION OF THE MUTUAL AGREEMENT PROCEDURE

CHAPTER I GENERAL PROVISIONS

1. The Rules for the Initiation and Execution of the Mutual Agreement Procedure (hereinafter referred to as the Rules) set forth the procedure of approaching the competent authority by taxpayers, within the meaning of the Rules, regarding the initiation of the mutual agreement procedure, the actions performed by the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania (hereinafter referred to as the STI under the MF), acting as the competent authority of the Republic of Lithuania, in examining the request received from a taxpayer and in executing the mutual agreement procedure, the rights and obligations of the STI under the MF and a taxpayer during the mutual agreement procedure executed and in implementing the agreement reached by the competent authorities during the mutual agreement procedure and in eliminating double taxation.

2. The Rules do not regulate the cases where a foreign entity does not request the initiation of a mutual agreement procedure, but approaches tax administration regarding recalculation of profit tax calculated and paid as per the Article 54 of the Law of the Republic of Lithuania on Corporate Income Tax (hereinafter referred to as the CIT) when Lithuanian entity approaches tax administration regarding the deduction of profit tax paid in the foreign states as per the Article 55 of the CIT. The Rules shall not apply when dealing with the issue of elimination of double taxation of the income received in the foreign states as per the Article 37 of the Law of the Republic of Lithuania on Personal Income Tax.

3. The Rules have been prepared in accordance with the Law of the Republic of Lithuania on Tax Administration (hereinafter referred to as the LTA), the Convention on the elimination of double taxation in connection with the adjustment of associated enterprises (90/436/EEC) (hereinafter referred to as the Convention), Revised Code of Conduct for the effective implementation of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (2009/C 322/01) (hereinafter referred to as the Revised Code of Conduct the provisions of the Agreement between Republic of Lithuania and another state for the avoidance of double taxation of income and capital (hereinafter referred to as the DTA), the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ratified by the Law of the Republic of Lithuania on the Ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (hereinafter referred to as the Multilateral Convention), the agreements implementing the relevant provisions of the DTAs, and other Lithuanian and international legislation, as well as international practice.

4. The terms used in the Rules:

4.1. **Competent authority** – is an authority which deals with the issues of the application of the mutual agreement procedures set forth in the DTA or in the Convention. The responsible person in Lithuania is considered to be the STI under the FM. The functions of the competent authority of the STI under the MF are carried out by the Permanent Working Group formed by the Order of the Head of the STI under the MF (hereinafter referred to as the Working Group) that is directly accountable to the Head of the STI under the MF.

4.2. **Taxpayer** – is Lithuanian or foreign taxpayer who can be a natural person or legal entity or any organization considered to be a person for tax purposes as per the provisions of the Convention or any DTA.

4.3. **Mutual agreement procedure** – is the procedure carried out within the framework of international treaties that is applied in consultation by the competent authorities regarding the interpretation and application of the provisions of the DTA or the Convention when a taxpayer is taxed (or can be taxed) outside the scope of the provisions of the DTA or the Convention in order to deal with the issue of the elimination of double taxation. The competent authorities of the contracting jurisdictions shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the DTA, they may also consult together for the elimination of double taxation in cases not provided for in the DTA. The competent authorities of two or more states may represent the party of this procedure if a taxpayer wishes so and the competent authorities agree regarding this in compliance with the obligations under the international treaties.

In the absence of an agreement between the competent authorities at the stage of the mutual agreement procedure, it is possible to move to the stage of dispute resolution in the Advisory Commission or arbitration.

The amounts of the penalties related to the taxes charged, that are the object regarding which the competent authority is approached, are not dealt with during the procedure of mutual agreement. The issue of the interest for late payment related to the taxes charged, that are the object regarding which the competent authority is approached, is dealt with during this procedure only if a taxpayer approaches the competent authority regarding this and the competent authorities agree regarding this.

Other terms used in the Rules are consistent with the terms enshrined in the national and international legislation.

5. Lithuanian taxpayer may approach the competent authority with a request regarding the corresponding adjustment for controlled transaction prices that do not comply with the arm's length principle that was carried out by the tax administrator of another state with whom Lithuania has entered into the DTA, in accordance with the Article 9 (2) of the relevant DTA, if a taxpayer has unilaterally agreed in that other state with the adjustment carried out by the tax administrator of that state and has paid the tax accordingly. The documents supporting the adjustment carried out must be enclosed to such request. The requests referred to in this clause of the Rules shall be submitted to the STI under the MF as to the competent authority and the STI under the MF shall assess the reasonableness of the adjustments carried out and shall adopt the decision to agree with the adjustment carried out or a part thereof to the extent compatible with the arm's length principle (the tax-related amounts calculated in another state shall not be assessed). Lithuanian competent authority shall adopt the decision to agree with the adjustment carried out or a part thereof only if the confirmation of the tax administrator of another state regarding the payment of the relevant tax in that other state is available.

The adjustments for controlled transactions price carried out by the tax administrator of another state are not considered to be as such providing the basis for reducing taxable profits in Lithuania, in adjusting the accounting documents or tax returns. Lithuanian taxpayer will have to submit a revised tax return only when the STI under the MF will adopt a decision to agree with the adjustment carried out or a part thereof, except where a tax audit on this matter has been carried out.

If, following the decision of the STI under the MF, double taxation will not be eliminated regarding the whole subject matter of the request referred to in this clause of the Rules, then, after a taxpayer has applied regarding the initiation of the double taxation procedure, the issue of double taxation of the remaining part can be addressed during the mutual agreement procedure.

6. The provisions of the Rules shall apply for the foreign taxpayers solely in so far as this relates to the liabilities in Lithuania and to the extent that this does not conflict with the international treaties.

CHAPTER II

APPEAL REGARDING THE MUTUAL AGREEMENT PROCEDURE

7. The mutual agreement procedure shall be initiated only at the taxpayer's request regarding the initiation of the mutual agreement procedure (hereinafter referred to as the request). A taxpayer may initiate the mutual agreement procedure when he believes that due to the actions of the tax administrator he has faced or will face double taxation (the theoretical possibility is not considered to be sufficient) which is inconsistent with the DTA and the Convention, also in other cases when the taxpayer was or will be taxed outside the scope of the provisions of the DTA, i.e.:

7.1. when the adjustment for controlled transaction prices that do not comply with the arm's length principle are carried out (for the existing economic double taxation or for the one which may arise);

7.2. regarding the issues of the attribution of profit to a permanent establishment;

7.3. regarding addressing of the issue of the dual residence of the person;

7.4. regarding an inappropriate application of the liability of withholding tax;

7.5. in cases in which there is a disagreement between the taxpayer and the tax authorities making the adjustment as to whether the conditions for the application of a DTA anti-abuse provision have been met or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a DTA;

7.6. In case of the *bona fide* taxpayer-initiated adjustments when the tax legislation of another state with whom Lithuania has entered into the DTA allow performing such adjustments for controlled transaction prices and the attribution of profit to the permanent establishments in the previously submitted tax returns in order to properly adhere to the arm's length principle. Such the adjustments carried out at the Lithuanian taxpayer's initiative are assessed by the ST under the MF, acting as the competent authority, only when a taxpayer submits the supporting evidence for the adjustments carried out, and finds out that a taxpayer has been duly and timely fulfilling tax liabilities both in Lithuania and in the foreign state;

7.7. in other cases when a taxpayer believes that he is taxed not in accordance with the provisions of the DTA.

7¹. During the mutual agreement procedure, the taxpayer may submit a request for resolution of recurring contentious issues, which are of relevance to other tax periods in respect of which the tax return filing date has elapsed prior to submitting such request, to be resolved during the ongoing mutual agreement procedure, in an analogous way (hereinafter referred to as the Request for other periods) if the facts are the same and the limitation periods for audit have not expired in respect of such tax periods. The Request for other periods shall be considered during the ongoing mutual agreement procedure if the competent authority of the foreign country consents thereto. The content of the Request for other periods shall be subject *mutatis mutandis* to the requirements applicable to requests that are laid down in these Rules.

For the purpose of assessing the information provided, the tax administrator may carry out tax audit or other actions of control in accordance with the procedure laid down by law.

8. The final and binding decision of the central tax administrator, of the Commission on Tax Disputes under the Government of the Republic of Lithuania or of the court regarding the tax dispute that arose regarding the same issue of the dispute, when, in accordance with the provisions of the LTA or the Law of the Republic of Lithuania on Proceedings of Administrative cases (hereinafter referred to as the LPAC), the deadline for filing a complaint is not restored, does not preclude a taxpayer from bringing a request. However, in such cases the STI under the MF cooperates with the competent authority of another state following the mandatory conclusions of the final and binding decision of the above-mentioned authorities.

8¹. In cases where, in connection with contentious issue, unilateral decision of Lithuanian Tax Administrator to approve the pricing principles of a future controlled transaction referred to in the taxpayer's request submitted in accordance with the provisions of the LTA, has been adopted, the taxpayer may apply and make a request. However, during the mutual agreement procedure, the STI under the MF may not derogate from the provisions of the binding decision, unless there are statutory grounds for not applying the decision.

9. The request must be submitted by the taxpayer or a person authorized by the taxpayer to the competent authority. In cases where an authorized person applies, the documents to support the authorization must be enclosed. In Lithuania, the request shall be submitted to Lithuanian Competent Authority – the STI under the MF at the address: Vasario 16-osios str. 14, 01514 Vilnius, Lithuania; e-mail address MAP.Lithuania@vmi.lt. The request and the documents annexed to it can be sent by post, to the e-mail address specified, served directly upon arrival by the person or his/her representative to the STI under the MF, or can be submitted electronically via the authorized Electronic Services area My STI of the State Tax Inspectorate Portal e.VMI.

10. The taxpayer must submit the request to the competent authority of the state of his/her residence or of his/her State of nationality in cases stipulated by the DTAs, unless stipulated otherwise by the DTAs or by the Multilateral Convention.

If the competent authority of Lithuania is approached by a person other than the person stipulated by the DTAs, then, at the latest within 1 month of receipt of the request the competent authority of Lithuania, regardless of whether or not it considers the request to be reasonable, shall forward the request received to the competent authority of the state of residence, and shall notify the applicant thereof. The request shall be forwarded to the competent authority of the other state in the form and language as received. The STI under the MF is not responsible for the compliance of the forwarded request with the statutory requirements of the other state.

In cases other than those referred to in the first paragraph of this clause, if so provided by the applicable DTA or the Multilateral Convention, the taxpayer may, regardless of domestic measures, submit the request to the competent authority of any contracting State. The competent authority of Lithuania shall forward the request received within 1 month of its receipt, regardless of whether or not it considers the request to be justified, to the competent authority of the state relating to the subject matter of the request, and shall notify the applicant taxpayer thereof.

11. A taxpayer must submit the request within the relevant period from the date of receipt of the notification of the calculation of taxes that resulted in or which could result in double taxation referred to in the DTA entered into with the specific state, taking into account the provisions of the effective Multilateral Convention (usually 3 years), or within 3 years when the competent authority is approached in accordance with the Convention. When a tax is calculated by Lithuanian tax administrator, this deadline shall be calculated from the date of service of the decision regarding the confirmation of the audit act (in case the tax audit is carried out) or other document indicating a specific amount of the additionally calculated tax and the justification of the amount calculation to the person in accordance with the Article 164 of the LTA. If the tax is deducted at source, the deadline shall commence from the date of tax deduction. But if the taxpayer proves that he only learned later that such tax was deducted, the deadline shall commence from the date specified by the taxpayer. When the taxpayer's taxation, in failure to comply with the provisions of the DTA, resulted from the decisions and/or actions of both states, the deadline of 3 years shall commence from the first notice of the last adopted decision or the action performed, regardless of which state has made such the decision or has taken such action.

12. A taxpayer has to specify and provide in the request:

12.1. the name (first and last name), address, ID number of the request submitting taxpayer;

12.2. the names (first and last name), addresses, ID numbers of the case participants (associated and the other persons involved in the dispute, e.g. the person who has deducted a tax at the source);

12.3. the name of the competent authority of another state to be included in the mutual agreement procedure;

12.4. the detailed information, facts and circumstances surrounding the case for which the request is made, including a comprehensive information about the mutual relations of the taxpayer and other relevant counterparties, the calculated (to be calculated) amounts of taxes (in further specifying as per tax periods), etc.;

12.5. the relevant tax periods;

12.6. reference to the applicable national rules and international treaties that are followed (the request may be based on the DTA or on the Convention, or on both treaties);

12.7. the justification why, in the opinion of the taxpayer, the provisions set forth in the Article 4 of the Convention or in the relevant Article of the DTA have not been observed;

12.8. the data necessary to determine the commencement of the term for application for the mutual agreement procedure enshrined in the DTA or in the Convention;

12.9. the information about the actions performed by a taxpayer regarding the case disputed, when possible, by providing the supporting documents: whether the competent authority of another state has been approached, whether a complaint or other claim regarding the subject matter of the request has been submitted, whether an agreement has been entered into with the tax administrator in the jurisdiction of any state regarding the subject matter of the request, whether the subject matter of the request relates to the matters which are the subject of a binding decision;

12.10. the copies of the decisions taken on the basis of which the tax liabilities are adjusted (except where the decisions have been taken by Lithuanian tax administrator) and other information about the taxpayer's correspondence with the foreign tax administrator which is relevant to the subject matter of the request;

12.11. a comprehensive information on the initiated tax disputes (complaints) related to the subject matter of the request and on all pre-trial and judicial proceedings related to the subject matter and the decisions adopted during them (by enclosing the copies of the decisions);

12.12. information on whether the taxpayer has applied for the same contentious issue to Lithuanian tax administrator with proposal to sign an agreement under the Article 71 of the LTA;

12.13. other information which, in the opinion of the taxpayer, is relevant for the execution of the mutual agreement procedure (for example, if the issue under consideration concerns transfer pricing adjustments, it is appropriate to provide transfer pricing documentation if it has not previously been submitted to Lithuanian tax administrator).

13. The separate requests must be submitted if the case involves several taxpayers or the jurisdictions of several states, in accordance with the relevant DTAs, except where the competent authorities are approached under the Convention if the case concerns the countries of the European Union which have ratified and are applying the Convention.

14. In order to achieve the effectiveness of the mutual agreement procedure and timely submission of information and the symmetry of data submission, the taxpayer or his associate, if the issue of taxation relates to more persons, should submit a request or its copy (together with all annexes enclosed) to the competent authorities of both states whose residents these persons are or of the states to which the subject matter of the request relates at the same time. It is appropriate to comply with this requirement when providing additional information at the request of the competent authority.

15. The request must be signed by a taxpayer. By signing the request a taxpayer confirms the correctness and completeness (comprehensiveness) of the information provided in the request.

16. Where a taxpayer submits a request and the annexes thereto in a non-official language, a translation of these documents into the official language must be provided at the request of the competent authority within the deadline specified in clause 18 of the Rules.

17. A taxpayer has to ensure as detailed as possible and as fast as possible response to all reasonable questions of the competent authority related to the case for which the request is submitted. Such confirmation should be included in the request.

CHAPTER III EXAMINATION OF THE REQUEST AND THE COMMENCEMENT OF THE MUTUAL AGREEMENT PROCEDURE

18. Upon receipt of the request the STI under the MF as the competent authority shall assess within 2 months from the receipt of the request or, if additional information is required, from the receipt of the additional information which must be requested within 2 months its compliance with the requirements set forth in the sub-clause 4.3 and in the clauses 7, 9, 11 and 12 of the Rules, it shall also verify if there are no other grounds on which the mutual agreement procedure is not initiated

specified in clauses 21 and 22 of the Rules, and shall inform the taxpayer on the acceptance of the request or the decision not to examine the request by giving reasons for such a decision.

If the taxpayer fails to provide the requested information within the time deadline set by the competent authority, the request may not be examined. The taxpayer shall be informed thereof within 15 days.

If it is found that a case has been filed, the examination of which is not attributable to the competent authority, since it is not regulated by international treaties, such the request can be forwarded within 30 days to another division of the STI under the MF or other authority if it is possible to identify the authority which is competent to deal with the questions provided, and the taxpayer shall be informed thereof.

19. In cases where the decisions referred to in clause 18 of the Rules not to examine the request of the taxpayer are adopted, the STI under the MF, as the competent authority, shall consult the competent authority of another state and shall ask for its opinion.

20. Having found out that the request complies with the requirements established by the Rules, and upon acceptance of the request the competent authority shall perform the following actions:

20.1. shall adopt a unilateral decision on the settlement of the issue in the dispute regarding which the request to initiate the mutual agreement procedure has been submitted (for example, to eliminate double taxation), and shall inform the competent authority of another state and the taxpayer thereof within 1 month;

20.2. if the competent authority, after examining the taxpayer's request, cannot by its decision unilaterally resolve the issue in the dispute, then the issue shall be dealt with by the competent authority during the mutual agreement procedure executed with the competent authority of another state. The applicant taxpayer shall, within 15 days from the date of the decision adoption, be informed in writing of the decision taken by the competent authority.

21. The competent authority, in accordance with the provisions of the Convention, is entitled to refrain from initiating the mutual agreement procedure if the competent authority is approached regarding the cases that were subject to serious penalties as provided for in the Article 8 of the Convention.

22. The mutual agreement procedure shall be also not initiated when:

22.1. the request has been submitted by a person who is not entitled to submit it;

22.2. in accordance with the Article 71 of the LTA, the agreement has been reached between the taxpayer and the tax administrator regarding the same issue in the dispute when neither party, i.e. neither the taxpayer, nor the tax administrator, has sufficient evidence to substantiate its calculations, and the taxpayer has lost the right to challenge the correctness of the calculation of the tax, and the tax administrator – to calculate a larger amount than the one specified in the agreement;

22.3. it is established that the taxpayer seeks to make use of the mutual agreement procedure by avoiding taxes or otherwise violating the tax laws.

23. In the event of a negative reply by the competent authority of another state to the proposal to resolve the issue by mutual agreement procedure, a taxpayer shall be informed in writing within 1 month from the receipt of such official letter by indicating the reasons for the refusal, if the disclosure thereof is not prohibited by the international agreements and the competent authority of another state.

24. Upon receipt of an unmotivated refusal of the competent authority of another state to initiate the mutual agreement procedure, the STI under the MF, as the competent authority, shall repeatedly approach the competent authority by asking to substantiate such the position. The taxpayer shall be informed in writing within one month from the receipt of information of the results of communication.

25. Upon receipt of the consent of the competent authority of another state to initiate the mutual agreement procedure the STI under the MF, as the competent authority, shall inform the taxpayer thereof within 15 days.

26. Upon receipt of the request information, when a taxpayer approaches the competent authority of another state regarding the initiation of the mutual agreement procedure, the STI under the MF, as the competent authority, shall take steps to ensure the preparation for a possible mutual agreement procedure (for example, the adequacy of the information provided shall be evaluated). If,

6 months after the receipt of this information, the STI under the MF, as the competent authority, does not receive a proposal from the competent authority of another state to start the mutual agreement procedure or other notification regarding the case, the STI under the MF shall, on its own initiative, approach the competent authority of another state with a request to provide information on the actions performed and the decisions taken.

If the refusal of the competent authority of another state to initiate the mutual agreement procedure, in the event of diverging opinions of the competent authorities and/or in the case of an unjustified decision of the competent authority of another state, is received, the STI under the MF, as the competent authority, shall repeatedly approach the competent authority of another state by presenting its position on the initiation of the mutual agreement procedure. In such case the STI under the MF, as the competent authority, shall also evaluate the possibility of adopting the decision referred to in sub-clause 20.1 of the Rules.

27. Upon receipt of the proposal of the competent authority of another state to initiate the mutual agreement procedure, the STI under the MF, as the competent authority, having a request that meets the requirements of the Rules, shall send a reply to the competent authority of another state within 1 month from its receipt and shall inform the taxpayer thereof within 15 days. In cases where the STI under the MF, as the competent authority, does not have all the information needed to take a decision, the aforementioned deadline of 1 month shall be calculated after the date of the receipt of such information from the taxpayer or the competent authority of another state. Upon receipt of all necessary information, the STI under the MF, as the competent authority, shall agree with the proposal to initiate the mutual agreement procedure if the request meets the provisions enshrined in sub-clause 4.3, in clauses 7, 11 of the Rules and there are no grounds provided for in clauses 21 and 22 of the Rules.

28. The competent authorities shall agree regarding the date of the commencement of the mutual agreement procedure in accordance with the requirements of the international legal acts.

CHAPTER IV IMPLEMENTATION OF THE MUTUAL AGREEMENT PROCEDURE

29. The STI under the MF, as the competent authority, undertakes to endeavour to reach an agreement with the competent authority of another state in the mutual agreement procedure by negotiation within 2 years from its commencement.

30. If the subject matter of the request consists of the results of the actions performed by Lithuanian tax administrator and the competent authority of another state agrees to resolve the issue in the way of the mutual agreement procedure, the STI under the MF, as the competent authority, not later than within 6 months (the recommended deadline is 4 months) from the agreement, to execute the mutual agreement procedure as per the DTA or within 4 months, when executing the procedure as per the Convention, prepares and sends out to the competent authority of another state the official letter stating the position of the STI under the MF, as the competent authority. If it is impossible to prepare the position within the aforementioned deadlines (for example, additional information is required from the taxpayer the provision of which takes fairly long time due to objective reasons), the reasons of such delay and the expected date of presentation of the position must be specified to the competent authority.

31. If the agreement was made to execute the mutual agreement procedure regarding the results of the actions of the tax administrator of another state and Lithuanian competent authority receives the official letter stating out the position of the competent authority of another state, it shall within 6 months from the date of the receipt of the position stating official letter assess the information received and prepare the responding position whereby it may support the position of the competent authority of another state, support in part, oppose the position or may request provision of additional information.

32. The competent authorities in each specific case shall decide on how to cooperate during the procedure, assesses the need for organizing meetings, to carry out a written process by exchanging the position stating documents, shall agree how often they will inform each other about the course of the procedure. In order to achieve effective mutual agreement procedures with regard to matters relating to the competent authorities in a number of countries where a taxpayer has filed several requests, multilateral meetings of competent authorities may be conducted, in agreement and in compliance with the restrictions set forth in the international treaties.

33. As taxpayers are not considered to be participants in the mutual agreement procedure, they are not involved in the negotiations of the competent authorities. However, the competent authorities may agree that the taxpayer(-s) may be invited to present the factual circumstances of the dispute, when necessary.

34. The STI under the MF, as the competent authority, may obtain information from the taxpayer for the assessment of the subject matter of the request by approaching it in writing or during the control actions performed by the tax administrator that are not subject to the limitations set out in Article 118 of the LTA.

35. The STI under the MF, as the competent authority, shall periodically, but at least every 6 months, inform the taxpayer of the course of the mutual agreement procedure by providing general information (the content of the meetings and correspondence of the competent authorities is considered confidential).

36. The mutual agreement procedure shall cease (shall be terminated or completed without reaching consensus) if:

36.1. there is no longer the subject matter of the request for which the mutual agreement procedure was initiated;

36.2. it is established that a taxpayer seeks to make use of the mutual agreement procedure by avoiding taxes or otherwise violating tax laws;

36.3. a taxpayer withdraws the request. In such cases, the taxpayer must submit a written notice stating the reasons for the withdrawal of the request;

36.4. the taxpayer avoids cooperation, does not provide data, does not respond to the written appeal of the competent authority for more than 6 months;

36.5. in the framework of the mutual agreement procedure under the DTAC, the competent authorities of the states do not, within a reasonable time, reach consensus and it shows that the continuation of the mutual agreement procedure will not produce the desired result;

36.6. the requirements of clause 50 of the Rules are not complied with;

36.7. there is no possibility to proceed with the mutual agreement procedure for the objective reasons specified by the competent authority of another state.

37. In cases stipulated in clause 36 of the Rules, the competent authorities shall consult each other on the termination / completion of the mutual agreement procedure without reaching consensus (agreement to disagree). In the event of adoption of decision to terminate the mutual agreement procedure / to complete the mutual agreement procedure without reaching consensus, the taxpayer shall be notified thereof within 15 days of agreement between the competent authorities, which shall be formalized by way of exchange of closing notes between each other. The taxpayer may defend their rights through national legislative measures in accordance with the legal acts, if the statutory time limits for submitting a complaint have not been exceeded, or if there is the ground for application for the deadline restoration.

38. When the mutual agreement procedure is conducted in accordance with the provisions of the Convention and the competent authorities of the states do not reach within 2 years from the receipt of the request or within the other deadline agreed between the competent authorities in accordance with the Article 7(4) of the Convention the agreement that would eliminate double taxation, they, in accordance with the provisions of the Convention, should initiate the formation of an advisory commission. An advisory commission should be formed within 6 months from the end of the deadline of 2 years. A taxpayer shall be informed of the formation of an advisory commission giving him the opportunity to participate or be represented in the work of the commission. This stage of the process

is carried out in accordance with the Convention, the Revised Code of Conduct and other documents adopted by the institutions of the European Union.

39. Where the mutual agreement procedure between competent authorities is conducted in accordance with the DTA, which provides for arbitration procedure, the competent authorities, having exhausted all possibilities to reach consensus during the mutual agreement procedure, and having failed to reach consensus within 2 years of receipt of request, or within other time term agreed by the competent authorities, and having received the taxpayer's request to refer the case to arbitration, may agree to refer the case to arbitration if the DTA enshrines the optional arbitration process, and shall refer the case to arbitration if the DTA enshrines the mandatory arbitration process.

This stage of the process shall be conducted in accordance with the agreements implementing the relevant DTA and the provisions of the DTA, the provisions of the Commentary of the Model Tax Convention on Income and Capital, and other documents produced by the Organization for Economic Cooperation and Development insofar as they comply with the applicable DTAs, depending on agreement between competent authorities in a particular case.

40. Clauses 38 and 39 of the Rules may apply, i.e. the STI under the MF, as a competent authority, along with the competent authority of the other state, may refer the case to the Advisory Commission or arbitration only where a binding decision in the same tax dispute has not been adopted, or the taxpayer has withdrawn the complaint before a binding decision has been adopted, and there are no other legal impediments to the execution of the decision of the Advisory Commission or arbitration, unless otherwise specified in the DTA.

CHAPTER V

THE RELATION OF THE MUTUAL AGREEMENT PROCEDURE WITH OTHER PROCEDURES AND LIABILITIES

41. In accordance with the provisions of part 3 of the Article 145 of the LTA, the national tax disputes are not dealt with if the mutual agreement procedure is being initiated regarding the amounts disputed. Since the LTA prefers the execution of the mutual agreement procedure instead of the tax dispute examining, after the taxpayer, in accordance with the provisions of the national laws, has brought a complaint before the pre-trial tax disputing authority against the decision imposing additional taxes on him and after he has filed a request on the same disputed issue, in accordance with the Article 156(2) of the LTA, the examination of the national tax dispute shall be suspended until the completion of the mutual agreement procedure.

42. After the taxpayer has brought a complaint before the court against the decision imposing additional taxes on him and after he has filed a request on the same disputed issue, the decision on the suspension of the examination of a tax dispute shall be adopted by the court in accordance with the provisions of the LPAC.

43. In the event of the judicial or administrative proceeding in any of the states participating in the mutual agreement procedure that takes place in accordance with the Convention, which deals with the imposition of serious penalties, as provided for in the Article 8 of the Convention, on the taxpayer regarding the issue of the dispute which is the object of the mutual agreement procedure, then the competent authorities may suspend the mutual agreement procedure until the completion of judicial or administrative procedures.

The issues concerning the suspension of the mutual agreement procedure that takes place as per the DTA shall be dealt with by the competent authorities by consensus.

44. In accordance with the Article 110 of the LTA, the receipt of the request is considered to be a basis for suspending enforcement of the taxes that form the subject matter of the request and the relating amounts in accordance with the national legal acts.

44¹. The mutual agreement procedure conducted according to these Rules, the dispute settlement process before the Advisory Commission or arbitration shall be terminated if the taxpayer submits a complaint regarding the same subject matter of the dispute which is stipulated by the Law on Double Taxation Dispute Resolution of the Republic of Lithuanian. The procedure conducted shall

be terminated from the date on which the STI under the MF or the competent authority of another Member State receives the complaint. The STI under the MF shall notify thereof the competent authorities of other states, the taxpayer and the Advisory Commission or the Arbitration Commission, if the dispute is being settled before it, at the latest within 15 days of receipt of the complaint.

CHAPTER VI
COMPLETION OF THE MUTUAL AGREEMENT PROCEDURE
AFTER THE RESOLUTION OF THE DISPUTE

45. Once the competent authorities have agreed their positions, before the exchange of closing letters between the competent authorities, the taxpayer shall be notified of the agreement content and shall be requested to provide within 30 days of receipt of the agreement with approval of the content of the agreement. Once the STI under the MF, as the competent authority, receives the confirmation that the taxpayer consents to the content of the agreement and there are no other obstacles referred to in other clauses of the Rules, the agreement between the competent authorities of the states shall be confirmed by way of exchange of closing letters. Thereby the mutual agreement procedure is completed.

46. The mutual agreement procedure can be completed only if the taxpayer agrees to all the conditions of the agreement reached and when the requirement set forth in clause 50 of the Rules is fulfilled, if it is relevant, as well as when the conditions established in another state are fulfilled, unless agreed upon by the competent authorities of the two parties in a different manner, insofar as it concerns the receipt of taxpayers' approval. If the taxpayer does not consent with the content of the agreement or if other necessary conditions have not been met, if they are established, the mutual agreement procedure is terminated and clause 37 of the Rules shall apply.

47. If, in the framework of the mutual agreement procedure, the examination of a tax dispute in the pre-trial institution was suspended, upon receipt of the consent of the taxpayer for the agreement reached during the mutual agreement procedure and after the competent authorities have exchanged their final letters, the relevant pre-trial institution which has suspended the tax dispute shall be informed within 20 days about the completed procedure by setting out the content of the agreement reached.

48. The LTA does not provide for the requirement for the taxpayer to withdraw a complaint after the completion of the mutual agreement procedure, as there remains no dispute between the parties. Accordingly, the pre-trial institution which has suspended the tax dispute itself resolves the issues related to the renewal of the complaint examination and the termination of the proceedings. If only some part of the tax dispute has been resolved during the mutual agreement procedure, the examination of the remaining part of the tax dispute shall be resumed and the dispute shall be examined in accordance with the procedure established by the legal acts.

49. When examining a tax dispute at the court, the issues related to the examination of the tax dispute shall be dealt with by the court in accordance with its discretion and the procedure established in the LPAC.

50. If, in the framework of the mutual agreement procedure, the examination of the tax dispute at the court has been suspended and the taxpayer agrees to the agreement reached during the mutual agreement procedure, the taxpayer has to refrain from applying other remedies and withdraw a complaint from the national authorities in the tax dispute concerning the same subject of the dispute if necessary in order to implement the agreement reached. In such case, the taxpayer has to provide evidences that he has taken actions regarding the withdrawal of the complaint within 60 days from the receipt of the appeal of the STI under the MF specified in clause 45 of the Rules.

51. If the court adopts the final enforceable judgement regarding the same subject of the dispute for which the competent authorities have already reached an agreement in the framework of the mutual agreement procedure and the content of the agreement reached during the mutual agreement procedure is in conflict with the judgment, the mutual agreement reached is deemed not

to be valid. The competent authority of another state shall be informed thereof immediately, but not later than within 30 days.

52. In the case provided for in clause 38 of the Rules, if an advisory commission has been set up to settle the issue of the dispute, which, in accordance with the procedure established by the international legal acts, has submitted its opinion on the elimination of double taxation, then the competent authorities shall take a decision by consensus within six months taking into account the opinion of the advisory commission. This decision may deviate from the opinion of the advisory commission, but if competent authorities fail to reach a decision within the set deadline, they must comply with and implement the opinion of the advisory commission.

Where the Advisory Commission has been set up, applying clause 38 of the Rules, the taxpayer's consent to the decision of the competent authorities is not required, i.e. the decision is implemented without taking regard of the taxpayer's position. In such case, the decision of competent authorities is binding both on the competent authorities and the taxpayer.

The taxpayer shall be notified in writing on the decision adopted within 15 days of receipt of information at the STI under the MF, unless the taxpayer was notified otherwise.

53. In case provided for in clause 39 of the Rules, the mutual agreement of the competent authorities which implements the arbitration award shall be binding on the competent authorities and the taxpayer(s), unless the taxpayer(s) directly involved in the dispute in question does / do not accept such mutual agreement, if such a requirement applies. The taxpayer shall be notified in writing on the arbitration award adopted and the mutual agreement executing it within 15 days of receipt of the decision at the STI under the MF, unless the taxpayer was notified otherwise.

53¹. The stage of the dispute settlement procedure before the Advisory Commission or arbitration, as referred to in clauses 52 and 53 of the Rules, shall be completed by way of exchange of closing letters between the competent authorities, unless the competent authorities choose the other method.

CHAPTER VII IMPLEMENTATION OF THE MUTUAL AGREEMENT REACHED

54. In the event that an agreement is reached, it shall be carried out regardless of the time limits imposed by the national laws of the states, unless international treaties provide otherwise.

55. In order to implement the agreement reached, when the agreement obliges the competent authority of Lithuania to exempt a taxpayer from double taxation, the taxpayer has not later than within 60 days from the receipt of the information about the agreement reached during the mutual agreement procedure or within the deadline pointed out by the tax administrator, taking into account the results of the agreement reached, to submit or correct the tax return(-s) of the relevant time period, despite the fact that the deadline set forth in part 1 of the Article 68 of the LTA for tax calculation and re-calculation has expired.

56. In order to recover (set-off) the excess amount of tax, the taxpayer, in accordance with the Rules for repayment (offsetting) of the excess amount (difference) of the tax and the fine for administrative offense or of the amounts unduly recovered approved by the Order No VA-186 of the Head of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania of 7 December 2004 "Regarding the repayment (offsetting) of the excess amount (difference) of the tax and the fine for administrative offense or of the amounts unduly recovered" (hereinafter referred to as the Order), has to submit a completed form FR0781 of the Application to repay (off-set) the excess amount (difference) of the tax and/or the fine for administrative offense or of the amounts unduly recovered approved by the Order. Such the application shall be considered under the general procedure, but without taking into account the restrictions on the limitation period for overpayments refund, unless they are provided by the DTA and the Convention.

57. The taxpayer does not have to perform the actions specified in clause 55 of the Rules if the mutual agreement procedure was initiated after the tax audit carried out by Lithuanian tax

administrator. In such case, the amount of the tax paid in excess, regarding which the competent authorities have agreed, shall be refund at the tax administrator's initiative.

58. If the mutual agreement procedure was initiated after the tax audit carried out by Lithuanian tax administrator, in order to implement an agreement reached, when the foreign competent authority is responsible for the elimination of double taxation, a taxpayer has to pay the tax regarding which the competent authorities have agreed in accordance with the LTA, if such the liability exists.

59. When by the actions of the tax administrator the taxes, regarding which the mutual agreement procedure was held, have been calculated additionally, the issue of the exemption from amounts calculated that are related to the taxes (fines and interest for late payment) shall be dealt with under the general procedure set forth in the LTA and in its implementing legal acts, and this is not a function of the competent authority, except where the issue of interest for late payment at the taxpayer's request and with the consent of the competent authority has been included in the subject matter of the mutual agreement procedure.

CHAPTER VIII FINAL PROVISIONS

60. The competent authorities may agree to make publicly available the information of the agreement reached in the specific case provided that it is supported by all taxpayers concerned by the double taxation elimination decision. Before making the information publicly available, the competent authorities shall align the text to be published with the taxpayers who must not later than within 60 days of receipt of the request for alignment submit their position. The information of the agreement reached shall not be published if the taxpayer, by providing commensurate motivation, indicates that the information related to the trade, business, industrial or professional secret or trade process will be disclosed in this way, or indicates that disclosure of information would be contrary to public policy, or its disclosure might harm the taxpayer for other reasons.

61. The Working Group shall examine the requests and adopt decisions in accordance with the tax laws, international treaties, the principles of justice, reasonableness, equality between taxpayers and non-discrimination and independence.

62. If the representative of the Working Group is the spouse, close relative of the taxpayer whose request is examined or a person related to the taxpayer by marriage, if the member of the Working Group performed or participated in performing the tax audit of the taxpayer related to the request regarding the initiation of the mutual agreement procedure, or there are other circumstances that raise doubts as to the impartiality of the representative of the Working Group, the representative of the Working Group must recuse himself from such examination and decision taking in accordance with the Law of the Republic of Lithuania on the Alignment of Public and Private Interests in the Public Service.

63. All information received by the STI under the MF from the taxpayer and from the competent authority of another state in performing the actions related to the mutual agreement procedure is protected and can only be used in accordance with the LTA and the international treaties.

64. The Rules *mutatis mutandis* shall apply in the framework of the mutual agreement procedure, upon submission by the taxpayer of a request for the alignment of the principles of transfer pricing of future controlled transactions and the entry into the agreement with the competent authority of another state. In such case, the functions of the competent authority are performed by the Large Taxpayers Monitoring and Consulting Department of the STI under the MF.
