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STATUTORY INSTRUMENTS

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**2020 No. 51**

**The Double Taxation Dispute Resolution (EU) Regulations 2020**

**PART 1**

Preliminary

**Citation and commencement**

1. These Regulations may be cited as the Double Taxation Dispute Resolution (EU) Regulations 2020 and come into force on 14th February 2020.

**Effect**

2. These Regulations have effect in relation to any income earned, or capital gained, in respect of a tax period commencing on or after 1st January 2018.

**General interpretative provisions**

3. In these Regulations—

“the Act” means the Taxation (International and Other Provisions) Act 2010;

“accept the complaint” means—

(a) in respect of a decision by the Commissioners to accept the complaint, a decision to accept it in accordance with regulation 13 (decision of the Commissioners to accept or reject the complaint), and

(b) in respect of a decision by another competent authority concerned to accept the complaint, a decision to accept it in accordance with Article 3(5) of the Directive<sup>(1)</sup>,

and in each case “accepts” and “accepted” are to be construed accordingly;

“Advisory Commission” means—

(a) an Advisory Commission set up in accordance with Part 4 (Advisory Commission: composition, procedure and costs etc) and—

(i) regulation 15 (request to set up an Advisory Commission for purposes of giving opinions on decisions to accept or reject the complaint), or

(ii) Chapter 3 (resolving a question in dispute: referral to Advisory Commission) of Part 3 (resolving a question in dispute); and

(b) an Advisory Commission set up in accordance with Articles 6 and 8 of the Directive;

“affected person” means any person who is resident for tax purposes in a member State and whose taxation is directly affected by a question in dispute;

“Alternative Dispute Resolution Commission” means—

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(1) “The Directive” is defined in section 128A of the Act as Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (OJ L 265/2 14.10.2017).

- (a) an Alternative Dispute Resolution Commission set up in accordance with regulation 33 (setting up an Alternative Dispute Resolution Commission) and Part 5 (Alternative Dispute Resolution Commission: composition and form etc), and
- (b) an Alternative Dispute Resolution Commission set up in accordance with Article 10 of the Directive;

“the Commission” means the Commission of the European Union;

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative;

“competent authority” means—

- (a) in relation to the United Kingdom, the Commissioners, and
- (b) in relation to a member State other than the United Kingdom, the authority designated for the purposes of the Directive by that member State;

“competent authority concerned” means the competent authority of a member State concerned;

“competent court” means the Upper Tribunal;

“the complaint” means the complaint submitted in accordance with Chapter 1 (submitting a complaint and its effect etc) of Part 2 (complaints about a question in dispute);

“the complainant” means the affected person who, or on whose behalf another person, submitted the complaint or is treated as having submitted it;

“culpable penalty” means a penalty which—

- (a) is payable under paragraph 1 of Schedule 41 to the Finance Act 2008<sup>(2)</sup> (failure to notify etc) where the failure is deliberate but not concealed within the meaning of paragraph 5 of that Schedule (degrees of culpability) or deliberate and concealed within the meaning of that paragraph,
- (b) is payable under paragraph 1 of Schedule 24 to the Finance Act 2007<sup>(3)</sup> (error in taxpayer’s document) where the failure is deliberate but not concealed within the meaning of paragraph 3 of that Schedule (degrees of culpability) or deliberate and concealed within the meaning of that paragraph, or
- (c) is payable under paragraph 1A of Schedule 24 to the Finance Act 2007<sup>(4)</sup> (error in taxpayer’s document attributable to another person);

“HMRC” means Her Majesty’s Revenue and Customs;

“MAP period” has the meaning given by regulation 20(4) (the mutual agreement procedure);

“member State concerned” means a member State in respect of which the question in dispute relates;

“mutual agreement procedure” has the meaning given by regulation 20(1);

“on a unilateral basis”—

- (a) in respect of a decision by the Commissioners to resolve a question in dispute, means a decision to resolve it in accordance with, in relation to each other member State concerned, unilateral relief arrangements<sup>(5)</sup>, and
- (b) in respect of a decision by any other competent authority concerned to resolve a question in dispute, has the same meaning as it has in Article 3(5) of the Directive;

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(2) 2008 c.9.

(3) 2007 c.11. Paragraph 1 was amended, in so far as is relevant, by paragraph 2 of Schedule 40 to the Finance Act 2008 (c.9) and paragraph 27(2) of Schedule 2 to the Finance Act 2019 (c.1).

(4) Paragraph 1A was inserted by paragraph 3 of Schedule 40 to the Finance Act 2008 (c.9).

(5) “Unilateral relief arrangements” is defined in section 8 of the Act.

“penalty proceedings” means the proceedings referred to in regulation 25(1)(a) (suspension of a mutual agreement procedure due to judicial or administrative proceedings);

“reject the complaint” means—

(a) in respect of a decision by the Commissioners to reject the complaint, a decision to reject it in accordance with regulation 13 (decision of the Commissioners to accept or reject the complaint), and

(b) in respect of a decision by any other competent authority concerned to reject the complaint, a decision to reject it in accordance with Article 3(5) of the Directive,

and in each case “rejects” and “rejected” are to be construed accordingly;

“Rules of Functioning” means the Rules of Functioning referred to in regulation 46(1) (the Rules of Functioning agreed by the Commissioners etc);

“smaller undertaking” means any person (other than an individual) which is not—

(a) a large undertaking for the purposes of [Directive 2013/34/EU](#) of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings<sup>(6)</sup>, or

(b) part of a large group for the purposes of that Directive;

“tax authority” means—

(a) in relation to the United Kingdom, HMRC, and

(b) in relation to any other member State, the tax authority or tax administration of that State; and

“tax period” means, in respect of income earned or capital gained, the 12 month period by reference to which tax on that income or capital may be charged in the United Kingdom or in another member State, as construed in accordance with the double taxation arrangements<sup>(7)</sup> which are, or may be, interpreted or applied in relation to the question in dispute.

### **The meaning of question in dispute**

4.—(1) In these Regulations a “question in dispute” is the matter giving rise to, or which may give rise to, a dispute between the United Kingdom and any other member State in relation to the interpretation of, or application of, double taxation arrangements resulting in taxation not in accordance with those arrangements.

(2) And references to “the question in dispute” in these Regulations are references to the particular question in dispute in respect of which the complaint was submitted.

### **The meaning of resident for tax purposes**

5.—(1) In these Regulations “resident for tax purposes” means, in respect of an affected person, resident for the purposes of the double taxation arrangements which are, or may be, interpreted or applied in relation to the question in dispute.

(2) For the purposes of paragraph (1), an affected person is treated as resident for tax purposes in the United Kingdom if the affected person’s residency for tax purposes is, or forms part of, the question in dispute and the affected person claims to be resident for tax purposes in the United Kingdom in relation to it.

(3) But paragraph (2) does not affect what may be decided in respect of the resolution of the question in dispute.

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<sup>(6)</sup> OJ L 182/19 29.6.2013.

<sup>(7)</sup> “Double taxation arrangements” is defined in section 2(4) of the Act.

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**Status:** *This is the original version (as it was originally made).*

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