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STATUTORY INSTRUMENTS

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**2020 No. 51**

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

**PART 3**

**Resolving a question in dispute**

**CHAPTER 1**

**Resolving the question in dispute on a unilateral basis**

**Decision by Commissioners to resolve question in dispute on a unilateral basis**

**18.**—(1) Where the Commissioners accept the complaint, the Commissioners may decide to resolve the question in dispute on a unilateral basis.

(2) If the Commissioners decide to resolve the question in dispute on a unilateral basis, the Commissioners must, without delay, notify—

- (a) the complainant, and
- (b) each other competent authority concerned,

of that decision.

(3) Following that notification, all proceedings under these Regulations, in respect of the question in dispute, are terminated.

(4) A decision to resolve the question in dispute on a unilateral basis may only be made by the Commissioners within the period of 180 days beginning with—

- (a) the date on which the Commissioners received the complaint,
- (b) the date on which the Commissioners received information requested in accordance with regulation 12 (requests by the Commissioners for further information), or
- (c) where paragraph (5) applies, the date on which the Commissioners received information mentioned in paragraph (6),

whichever is later.

(5) This paragraph applies where the complainant had brought proceedings before any court or tribunal (or other judicial body) to seek a remedy, in respect of the question in dispute, which is available under the national law of a member State concerned.

(6) The information is—

- (a) a final judgment of that court, or any other evidence which proves that those proceedings have been definitively concluded, or
- (b) any evidence which proves that those proceedings have been suspended.

**Decision by other competent authority concerned to resolve the question in dispute on a unilateral basis**

**19.** If a competent authority concerned other than the Commissioners—

- (a) decides to resolve the question in dispute on a unilateral basis, and
- (b) notifies the complainant, the Commissioners, and each other competent authority concerned, of that decision at the same time and without delay,

all proceedings under these Regulations, in relation to that question in dispute, are terminated on the date of that notification.

## CHAPTER 2

### Resolving a question in dispute by mutual agreement

#### **The mutual agreement procedure etc**

**20.**—(1) A “mutual agreement procedure” is an endeavour to resolve a question in dispute in accordance with this regulation.

(2) Paragraph (3) applies where the Commissioners—

- (a) have accepted the complaint, and
- (b) are satisfied that each other competent authority concerned has accepted the complaint.

(3) The Commissioners must endeavour to resolve the question in dispute by mutual agreement with each other competent authority concerned within the MAP period.

(4) The “MAP period” is the period of 2 years beginning with—

- (a) the date on which the Commissioners accepted the complaint,
- (b) the date on which the Commissioners are satisfied that each other competent authority concerned has accepted the complaint, or
- (c) where paragraph (5) applies, the date on which the Commissioners received the information mentioned in paragraph (6),

whichever is later.

(5) This paragraph applies where the complainant had brought proceedings before any court or tribunal (or other judicial body) to seek a remedy, in respect of the question in dispute, which is available under the national law of a member State concerned.

(6) The information is—

- (a) a final judgment of that court, tribunal (or other judicial body) or any other evidence which proves that those proceedings have been definitively concluded, or
- (b) any evidence which proves that those proceedings have been suspended.

(7) The MAP period may be extended in accordance with regulation 23.

(8) Nothing in these Regulations prevents the Commissioners or any other person initiating or continuing any proceedings, related to the question in dispute, which may result in a financial or other penalty.

(9) This regulation is subject to Chapter 1 of this Part, and regulations 22, 24 and 25.

#### **Request for information during a mutual agreement procedure**

**21.**—(1) The Commissioners may make a request to the complainant for any information which the Commissioners consider may be necessary to resolve the question in dispute by a mutual agreement procedure.

(2) That request may be made at any time during a mutual agreement procedure.

(3) The complainant must ensure that all the information requested by the Commissioners under paragraph (1) is provided to the Commissioners within the period of 90 days beginning with the date on which the complainant received the request.

(4) When that information is provided to the Commissioners, the complainant must ensure a copy of it is sent at the same time to each other competent authority concerned.

(5) But paragraph (4) does not apply where the affected person is an individual who, or a smaller undertaking which, is resident for tax purposes in the United Kingdom.

(6) In those cases, after the information is received by the Commissioners, the Commissioners must send a copy of it to each other competent authority concerned at the same time and without delay.

(7) If the complainant contravenes paragraphs (3) or (4)—

(a) the Commissioners may make an application to the competent court in respect of that contravention, and

(b) the competent court may order the complainant to comply with the requirements in those paragraphs.

(8) For the purposes of paragraph (1), the Commissioners may make as many requests as the Commissioners consider appropriate.

### **Mutual agreement procedure following Advisory Commission opinion on decision to reject the complaint**

**22.**—(1) Paragraph (2) applies where—

(a) an Advisory Commission has given an opinion that the Commissioners, or any other competent authority concerned, should not have decided to reject the complaint,

(b) the Commissioners, or any other competent authority concerned, have made a request, to each other competent authority concerned, to resolve the question in dispute by a mutual agreement procedure, and

(c) the Advisory Commission has confirmed that the requirements of Article 3(1) to (3) of the Directive have been met.

(2) The Commissioners must endeavour to resolve the question in dispute by a mutual agreement procedure as if the MAP period begins on—

(a) the date on which the Commissioners received notification of the opinion of the Advisory Commission, or

(b) the date on which another competent authority concerned received notification of that opinion,

whichever is later.

(3) If more than one other competent authority concerned received notification of that opinion on different dates, the date mentioned in paragraph (2)(b) is the later of those dates (and the Commissioners may make enquiries of any other competent authority concerned for the purposes of ascertaining when that competent authority received notification of that opinion).

(4) The Commissioners may only make the request, mentioned in paragraph (1)(b), within the period of 60 days beginning with the date the Commissioners received notification of the opinion of the Advisory Commission.

(5) When the Commissioners make such a request they must notify the Advisory Commission and the complainant.

**Extension of the MAP period**

**23.**—(1) The Commissioners may, at any time within the MAP period, make a request to each other competent authority concerned to extend the MAP period by a period which is—

- (a) specified in the request, and
- (b) no longer than a year beginning with the date on which the MAP period would end but for the request.

(2) The Commissioners must provide a written justification for the request when it is made.

(3) When the Commissioners make the request and provide the justification, the MAP period is extended by the period specified in the request (irrespective of whether that request is formally accepted by any other competent authority concerned).

(4) Where another competent authority concerned makes a request to extend the period referred to in Article 4 of the Directive, in accordance with that Article, the MAP period is extended accordingly.

**Termination of a mutual agreement procedure due to a judgment of a court**

**24.**—(1) Paragraph (2) applies if, before a mutual agreement has been made, any court or tribunal (or other judicial body), which is referred to in Article 16(4) of the Directive, gives a judgment, in respect of a question in dispute, which is binding on the Commissioners or any other competent authority concerned.

(2) The Commissioners are not required to resolve that question in dispute by a mutual agreement procedure.

(3) If a court or tribunal in the United Kingdom gives a judgment referred to in paragraph (1), the Commissioners must notify each other competent authority concerned—

- (a) of the judgment, and
- (b) that, on and after the date of that notification, the mutual agreement procedure in respect of that question in dispute is terminated.

**Suspension of a mutual agreement procedure due to judicial or administrative proceedings**

**25.**—(1) The Commissioners may, with the agreement of each other competent authority concerned, suspend a mutual agreement procedure where—

- (a) judicial or administrative proceedings were commenced which could potentially lead to the imposing of a culpable penalty in relation to any adjustment of income or capital to which the question in dispute relates (the “penalty proceedings”), and
- (b) those proceedings are being conducted concurrently with a mutual agreement procedure.

(2) A suspension of a mutual agreement procedure under this regulation—

- (a) may only take place on or after the commencement of the penalty proceedings, and
- (b) suspends the MAP period.

(3) The Commissioners may, with the agreement of each other competent authority concerned, resume a mutual agreement procedure before the date on which the penalty proceedings are finally concluded (including any appeal in relation to those proceedings).

(4) If a mutual agreement procedure has not been resumed before that date, it is treated as resumed on that date.

(5) The MAP period continues on the date when the mutual agreement procedure resumes or is treated as resumed.

### **Dispute resolved by mutual agreement**

**26.**—(1) This regulation applies where the Commissioners have reached a mutual agreement as a result of a mutual agreement procedure.

(2) The Commissioners must, without delay, notify the complainant—

- (a) of what the resolution to the question in dispute is, and
- (b) of the effect of, and requirements set out in, paragraphs (4) and (5).

(3) That notification must be made electronically or otherwise in writing.

(4) If all of the conditions in paragraph (5) are met, the mutual agreement is to be treated as a decision of the Commissioners which must be given effect to by the Commissioners, without delay<sup>(1)</sup>.

(5) The conditions are that the Commissioners are satisfied that—

- (a) the complainant accepts the mutual agreement as a binding decision,
- (b) the complainant renounces the right to any other remedy,
- (c) if the complainant has commenced proceedings in relation to such a remedy, the complainant has discontinued those proceedings and provided evidence of that to the Commissioners, and
- (d) where the complainant is not an individual who, or smaller undertaking which, is resident for tax purposes in the United Kingdom, the complainant has provided that evidence to each other competent authority concerned.

(6) The evidence referred to in paragraph (5)(c) and (d) must be provided by the complainant to the Commissioners, and (as the case may be) each other competent authority concerned, within the period of 60 days beginning with the date on which the complainant received the notification mentioned in paragraph (2).

(7) If the complainant contravenes paragraph (6)—

- (a) the Commissioners may make an application to the competent court in respect of that contravention, and
- (b) the competent court may order the complainant to comply with the requirements in that paragraph.

### **Duty to inform the complainant if dispute not resolved by mutual agreement**

**27.** If the Commissioners do not reach a mutual agreement as a result of the mutual agreement procedure, the Commissioners must ensure the complainant is notified of that fact and must provide, in general terms, the reason that no agreement was reached.

## **CHAPTER 3**

### **Resolving a question in dispute: referral to Advisory Commission**

#### **Request to set up an Advisory Commission for the purpose of resolving the question in dispute**

**28.**—(1) Paragraphs (2) and (3) apply where, after having taken a decision to accept the complaint, the Commissioners and each other competent authority concerned have not resolved the question in dispute within the specified time limits—

- (a) on a unilateral basis, or

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(1) And see section 128B (giving effect to requirements under section 128A regulations) of the Act which was inserted by section 83 of the Finance Act 2019 (c.1).

- (b) by a mutual agreement procedure.
- (2) The complainant (or a person on behalf of the complainant) may make a request to the Commissioners for an Advisory Commission to be set up for the purpose of resolving the question in dispute.
- (3) When that request is made to the Commissioners, it must also be made to each other competent authority concerned.
- (4) But paragraph (3) does not apply where the complainant is an individual who, or a smaller undertaking which, is resident for tax purposes in the United Kingdom.
- (5) A request made under paragraph (2) must be made electronically or otherwise in writing.
- (6) And it must be made within a period of 50 days beginning with (as the case may be)—
- (a) the date the complainant received—
    - (i) a notification of acceptance under regulation 13(6) (decision of the Commissioners to accept or reject the complaint), or
    - (ii) a notification under regulation 27 (duty to inform the complainant if dispute not resolved by mutual agreement); or
  - (b) the date of the judgment—
    - (i) of the competent court following an appeal under regulation 14(2) (appeal to competent court against decision of Commissioners to reject the complaint), or
    - (ii) of the court or tribunal (or other judicial body) in another member State concerned, which is referred to in Article 5(3) of the Directive, following an appeal to it in accordance with that Article.
- (7) If the Commissioners receive a request made under paragraph (2), they must endeavour to set up an Advisory Commission within the period of 120 days beginning with the date on which they received the request.
- (8) After it is set up, the chair of the Advisory Commission must inform the complainant that it is set up, without delay.
- (9) If an Advisory Commission is not set up in accordance with paragraph (7), the complainant may make an application to the competent court—
- (a) for the purposes of regulation 45 (competent court: appointments of independent persons of standing and the chair), and
  - (b) within the period of 30 days beginning with the day after the date the period mentioned in paragraph (7) ended.
- (10) This regulation is subject to regulations 29 to 31 and Chapter 4 (resolving a question in dispute: referral to Alternative Dispute Resolution Commission).

**Advisory Commission not to be set up or proceedings terminated etc where the question in dispute resolved by court**

- 29.**—(1) This regulation applies where any court or tribunal (or other judicial body), which is referred to in Article 16(4) of the Directive, gives a judgment, in respect of the question in dispute, which is binding on the Commissioners or any other competent authority concerned.
- (2) Paragraph (3) applies if a judgment mentioned in paragraph (1) is given before or at the same time as the complainant has made a request—
- (a) to the Commissioners in accordance with regulation 28, or
  - (b) to another competent authority concerned in accordance with Article 6(1) of the Directive, to set up an Advisory Commission for the purposes of resolving the question in dispute.

(3) Where the question in dispute is not resolved as a result of a mutual agreement procedure (within the MAP period) the Commissioners are not required to set up an Advisory Commission to resolve it.

(4) Paragraph (5) applies if any judgment mentioned in paragraph (1) is given—

(a) after any request mentioned in paragraph (2), and

(b) before the Advisory Commission has given its opinion on the resolution of the question in dispute.

(5) Any proceedings before the Advisory Commission, in respect of the question in dispute, must be terminated and the Advisory Commission must not give that opinion (and if the Advisory Commission has not yet been set up, it must not be set up).

(6) Where a court or tribunal in the United Kingdom gives the judgment mentioned in paragraph (1)—

(a) for the purposes of paragraph (3), the Commissioners must notify each other competent authority concerned of the effect of the judgment;

(b) for the purposes of paragraph (5), the Commissioners must notify each other competent authority concerned, and the Advisory Commission (if it has been set up), of the effect of the judgment.

#### **Advisory Commission not to be set up or proceedings stayed in culpable penalty cases**

**30.**—(1) Regulation 28 does not apply in cases where a culpable penalty has been imposed in relation to any adjustment of income or capital to which the question in dispute relates.

(2) The Commissioners may stay the proceedings before an Advisory Commission where—

(a) judicial or administrative proceedings have been commenced which could potentially lead to the penalties referred to in paragraph (1) (“the penalty proceedings”), and

(b) the penalty proceedings are being conducted concurrently with the proceedings before the Advisory Commission.

(3) Where the Commissioners stay the proceedings, the Commissioners must give a notification of that stay to the complainant, the Advisory Commission and each other competent authority concerned.

(4) The period of the stay must be no longer than the period beginning with the date of that notification and ending on the date the penalty proceedings are finally concluded (including any appeal in relation to those proceedings).

(5) If a competent authority concerned, other than the Commissioners, stays proceedings before the Advisory Commission in accordance with Article 16(6) of the Directive, that stay has effect for the purposes of these Regulations.

#### **Refusal to set up an Advisory Commission in a case not involving double taxation**

**31.**—(1) The Commissioners may decide to refuse to set up an Advisory Commission under regulation 28(7) if, in any particular case, the question in dispute does not involve double taxation.

(2) If the Commissioners make such a decision the Commissioners must inform the complainant and each other competent authority concerned, without delay.

(3) In paragraph (1), “double taxation” has the same meaning as it has in Article 2 of the Directive.

#### **Advisory Commission opinion on resolution of the question in dispute**

**32.**—(1) Paragraph (2) applies—

- (a) where an Advisory Commission is set up for the purpose of resolving a question in dispute;
- (b) where (notwithstanding that the Advisory Commission was not initially set up for that purpose)—
  - (i) the Commissioners, and each other competent authority concerned, have not made a request to resolve the question in dispute by a mutual agreement procedure, and
  - (ii) that is the only reason that regulation 22(2) (mutual agreement procedure following Advisory Commission opinion on decision to reject complaint) does not apply.
- (2) The Advisory Commission must give an opinion on the resolution of the question in dispute within the period of 180 days beginning with—
  - (a) in the case of paragraph (1)(a), the date on which it was set up, and
  - (b) in the case of paragraph (1)(b), the day after the date the period mentioned in regulation 22(2) ended.
- (3) That opinion must be given electronically or otherwise in writing.
- (4) The period mentioned in paragraph (2) may be extended (in both cases) by the Advisory Commission, by no more than 90 days, where the Advisory Commission considers that more than 180 days is needed for it to give an opinion having regard to the question in dispute.
- (5) If the Advisory Commission extends that period the chair must ensure all of the following persons are notified of that extension—
  - (a) the Commissioners;
  - (b) each competent authority concerned;
  - (c) the complainant.
- (6) The Advisory Commission must base its opinion on (among other things)—
  - (a) the double tax arrangements, the Act, these Regulations, and any other enactment related to the question in dispute, and
  - (b) the law of each other member State concerned in so far as it relates to the question in dispute.
- (7) The Advisory Commission must adopt its opinion by a simple majority of its members.
- (8) If there is no majority, the chair must determine the final opinion.
- (9) The chair must communicate the opinion of the Advisory Commission, at the same time and without delay, to the Commissioners and each other competent authority concerned.

## CHAPTER 4

### Resolving a question in dispute: referral to Alternative Dispute Resolution Commission

#### **Setting up an Alternative Dispute Resolution Commission**

- 33.**—(1) This regulation applies if the Commissioners decide that an Alternative Dispute Resolution Commission is to be set up to give an opinion on how to resolve a question in dispute (instead of an Advisory Commission).
- (2) The Commissioners may make such a decision if—
    - (a) each other competent authority concerned agrees, and
    - (b) the complainant (or a person on behalf of the complainant) makes a request for an Advisory Commission to be set up for the purpose of resolving the question in dispute.
  - (3) For the purposes of this regulation, Chapter 3 applies in relation to an Alternative Dispute Resolution Commission as if there were the following modifications.



(4) Chapter 3 has effect as if, in each place it occurs, for “Advisory Commission”, “Alternative Dispute Resolution Commission” were substituted other than—

- (a) in regulation 28(2), (7) and (9) (request to set up an Advisory Commission for the purpose of resolving the question in dispute); and
- (b) in regulation 29(2) (Advisory Commission not to be set up or proceedings terminated etc where question in dispute resolved by court).

(5) Regulation 28 has effect as if—

- (a) in paragraphs (7) and (9), after “Advisory Commission”, “or Alternative Dispute Resolution Commission” were inserted; and
- (b) paragraph (8) were omitted.

(6) Regulation 30 (Advisory Commission not to be set up or proceedings stayed in culpable penalty cases) has effect as if in paragraph (1), for “Regulation 28”, “Regulation 33” were substituted.

(7) Regulation 31 (refusal to set up an Advisory Commission in a case not involving double taxation) has effect as if, in paragraph (1), for “regulation 28(7)”, “regulation 33” were substituted.

(8) Regulation 32 (Advisory Commission opinion on resolution of the question in dispute) has effect as if—

- (a) paragraph (1)(b) were omitted;
- (b) paragraph (2)(b) were omitted; and
- (c) in paragraph (4), “(in both cases)” were omitted.

## CHAPTER 5

### Resolving a question in dispute: final decision of competent authorities

#### **The final decision of the competent authorities**

**34.**—(1) In this Chapter, the “final decision” is a decision which resolves the question in dispute or is a decision which is treated as such in accordance with paragraph (4).

(2) The Commissioners must, with the agreement of each other competent authority concerned, endeavour to make the final decision within the period of 180 days beginning with the date on which the Commissioners received notification of the opinion of the Advisory Commission or the Alternative Dispute Resolution Commission (as the case may be).

(3) The final decision may deviate from the opinion of—

- (a) the Advisory Commission, or
- (b) the Alternative Dispute Resolution Commission (if, and to the extent, that is permitted under the Rules of Functioning for that Commission).

(4) But if the Commissioners fail to make the final decision, within the period mentioned in paragraph (2), they must treat the opinion of the Advisory Commission or the Alternative Dispute Resolution Commission as the final decision, as though it was made on the last day of that period.

(5) The Commissioners must notify the complainant of the final decision without delay and in any case within the period of 30 days beginning with the date of that decision.

(6) If the Commissioners fail to notify the complainant in accordance with paragraph (5), the complainant may appeal to the competent court in respect of that failure, and that court may make an order in relation to that appeal.

(7) Paragraph (8) applies, subject to paragraph (9), if the complainant (or a person on behalf of the complainant), within the period of 30 days beginning with the date on which the complainant received notification of the final decision, notifies the Commissioners that the complainant—

- (a) accepts the final decision, and
  - (b) renounces any right to any other remedy in respect of the question in dispute to which it relates.
- (8) The Commissioners are required to give effect to the final decision within the period of 60 days beginning with the date on which the complainant received notification of it.
- (9) But the Commissioners are not required to give effect to that final decision if—
- (a) it is a decision treated as made in accordance with paragraph (4), and
  - (b) any court (or other judicial body) referred to in Article 15(4) of the Directive decides, in accordance with that Article, that there was a lack of independence.
- (10) If the Commissioners fail to give effect to the final decision, in contravention of paragraph (8) and section 128B (giving effect to requirements under section 128A regulations) of the Act, the complainant may appeal to the competent court in respect of that failure and that court may make an order in relation to that appeal.
- (11) The final decision does not bind the Commissioners in respect of any other case (even if it must be given effect to by the Commissioners).
- (12) Any notification under this regulation must be made electronically or otherwise in writing.

**Publication of the final decision of the competent authorities or an abstract of it**

- 35.**—(1) Paragraph (2) applies where—
- (a) the Commissioners agree with each other competent authority concerned that a final decision may be published in its entirety, and
  - (b) the affected persons consent to that publication.
- (2) The Commissioners must ensure that the final decision is published in its entirety.
- (3) If paragraph (2) does not apply, the Commissioners must ensure that an abstract of the final decision is published.
- (4) That abstract must include the information required by Article 18(3) of the Directive.
- (5) Before that abstract is published the Commissioners must ensure that—
- (a) it is sent to the affected persons, and
  - (b) each other competent authority concerned agrees to its publication.
- (6) Any affected person may make a request to the Commissioners not to publish any particular information in the abstract of the final decision if that information concerns any trade, business, industrial or professional secret or trade process, or it is contrary to public policy.
- (7) Such a request must be made—
- (a) within the period of 60 days beginning with the date on which the abstract of the final decision was received by the affected person, and
  - (b) electronically or otherwise in writing.
- (8) The Commissioners must ensure that the Commission is notified in respect of information published under paragraph (3) before it is published and without delay.