
STATUTORY INSTRUMENTS

2020 No. 51

The Double Taxation Dispute Resolution (EU) Regulations 2020

PART 2

Complaints about a question in dispute

CHAPTER 1

Submitting a complaint and its effect etc

Submitting a complaint to the Commissioners

6.—(1) A complaint, in respect of a question in dispute, may only be submitted to the Commissioners by—

- (a) an affected person, or
- (b) a person on behalf of an affected person.

(2) The complaint—

- (a) must be submitted to the Commissioners within the period of 3 years beginning with the date on which the affected person receives the first notification of the action⁽¹⁾ resulting in, or which will result in, the question in dispute, and
- (b) must include, or be accompanied by, the information required by regulation 7.

(3) The complaint must be submitted electronically or otherwise in writing.

(4) Paragraph (2) applies irrespective of whether the affected person has recourse to any other remedy in the United Kingdom or in any other member State concerned.

(5) In paragraph (1)(b) a “person on behalf of an affected person” includes a competent authority concerned.

Information to be provided by the complainant when the complaint is submitted

7.—(1) The information which is required to be included in, or accompanying, the complaint when it is submitted is the information referred to in paragraphs (2) to (4).

(2) The information referred to is information for the identification of the complainant and of any other person to whom, or to which, the complaint relates, in particular—

- (a) their names and addresses, and
- (b) the tax identification numbers used in respect of them in the United Kingdom and in each of the other member States concerned.

(1) The phrase “first notification of the action”, as well as being used in the Directive, is used in Article 25 of the OECD model tax convention on income and on capital (2017), which may be found in the Model Tax Convention on Income and on Capital: Condensed Version 2017, OECD Publishing, ISBN 978-92-64-28794-5. That text is available electronically at https://dx.doi.org/10.1787/mtc_cond-2017-en and a hard copy is available for inspection by prior arrangement at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

(3) The information referred to is the facts and circumstances of the case including, in particular, all of the following information—

- (a) what the complainant considers is the question in dispute;
- (b) references, in relation to the question in dispute, to the rules of the member States concerned and the double taxation arrangements which apply to the question in dispute;
- (c) the tax period to which the question in dispute relates;
- (d) details of the transactions related to the question in dispute (including how they are structured);
- (e) the relationship between the complainant and any other parties to those transactions;
- (f) details, in relation to those transactions or otherwise in respect of the question in dispute, of any appeal against a decision of a tax authority or of any litigation (including any judgment or decision of any court or tribunal);
- (g) information on any proceedings referred to in regulation 10(4) (as if regulation 10(4) were not subject to regulation 10(5));
- (h) copies of any mutually binding agreement—
 - (i) between the complainant and HMRC, and
 - (ii) between the complainant and each other tax authority in the member States concerned; and
- (i) copies of documents which the complainant seeks to rely on evidencing information provided under this paragraph.

(4) The information referred to is the details of the actions of each tax authority in each member State concerned which gives rise, or will give rise, to the question in dispute, including in particular (and where applicable)—

- (a) the dates of those actions,
- (b) details of the income and capital, in respect of each member State concerned, to which the question in dispute relates,
- (c) the inclusion of such income and such capital in the taxable income in each of those member States,
- (d) details of the tax charged, or which may be charged, in relation to that income or that capital, and
- (e) a copy of the final tax assessment decision (in the form of, for example, a final tax assessment notice or equivalent document) to which the question in dispute relates.

(5) In paragraph (2), “tax identification numbers” means—

- (a) in relation to the United Kingdom, a Unique Taxpayer Reference number allocated by HMRC in respect of the tax affairs of a person, and
- (b) in relation to any other member State concerned, a reference number allocated by, or otherwise used by, the tax authority of that member State in respect of the tax affairs of a person.

(6) For the purposes of paragraph (4) any mention of amounts in the information which is referred to must be provided in the currency of each member State concerned.

Complaint to be submitted to other competent authorities concerned

8.—(1) When the complaint is submitted to the Commissioners, the affected person must ensure the complaint is submitted to each other competent authority concerned.

(2) For the purposes of paragraph (1), the complaint must include or be accompanied by—

(a) the information included in, or accompanying, the complaint when it was submitted to the Commissioners, and

(b) the names of each of the member States concerned.

(3) If a competent authority concerned does not accept a complaint submitted in English, for the purposes of Article 3(1) of the Directive, a copy of it must be submitted in a language which that authority does accept for those purposes.

(4) This regulation is subject to regulation 9.

Exception for individuals and smaller undertakings

9.—(1) This regulation applies where the affected person—

(a) is an individual who is resident for tax purposes in the United Kingdom, or

(b) is a smaller undertaking which is resident for tax purposes in the United Kingdom and, when the complaint is submitted, the Commissioners are informed that it is such a smaller undertaking.

(2) Where this regulation applies, regulation 8(1) does not apply.

(3) The Commissioners must notify each other competent authority concerned of the complaint by sending it to them, at the same time, within the period of 60 days beginning with the date on which the complaint was received by the Commissioners.

(4) For the purposes of that notification, regulation 8(2) and (3) apply to the Commissioners as if it were the Commissioners who must ensure the complaint is submitted.

(5) Where the Commissioners make a notification under paragraph (3), the affected person is treated as having submitted the complaint to each competent authority concerned.

Effect of submitting the complaint etc

10.—(1) The submission of the complaint—

(a) does not constitute a claim for relief under the Tax Acts, the enactments relating to capital gains tax or the enactments relating to petroleum revenue tax, and

(b) is accordingly not subject to section 42 of TMA 1970(2) or any other enactment relating to the making of such a claim.

(2) But nothing in these Regulations prevents an affected person from making such a claim.

(3) The submission of the complaint has the effect, for the purposes of Article 16(5) of the Directive, of terminating proceedings referred to in paragraph (4).

(4) The proceedings referred to are any other case in respect of the question in dispute—

(a) which was presented to the Commissioners, or another competent authority concerned, under and for the purposes of the double taxation arrangements which are, or may be, interpreted or applied in relation to the question in dispute, or

(b) to which the Arbitration Convention applies.

(5) But those proceedings do not include a case where, when the complaint in respect of that question in dispute was submitted—

(a) the Commissioners, or another competent authority concerned, have arrived at a solution to the case or the Commissioners have reached a mutual agreement with each other competent authority concerned for the resolution of the case, or

(b) there is a Convention determination in respect of the case.

(2) 1970 c.9. TMA 1970 is defined in section 500 of the Act as the Taxes Management Act 1970.

(6) For the purposes of paragraph (3), the termination of the proceedings has effect when the complaint was received by the Commissioners or when it was received by another competent authority concerned (whichever happens earlier).

(7) Paragraph (5) applies even if, when the complaint was submitted, the Commissioners have not given effect—

(a) to the solution or the mutual agreement under section 124(2) (giving effect to solutions to cases and mutual agreements resolving cases) of the Act, or

(b) to the Convention determination under section 127(3) (giving effect to agreements, decisions and opinions under the Convention) of the Act.

(8) For the purposes of these Regulations, section 6 (the effect given by section 2 to double taxation arrangements) of the Act has effect as though it is subject to this regulation.

(9) Nothing in these Regulations prevents anything which may be done in accordance with the Directive in a territory outside of the United Kingdom.

(10) In this regulation—

(a) “Arbitration Convention” has the meaning given in section 126 (meaning of “the Arbitration Convention”) of the Act, and

(b) “Convention determination” has the meaning given in section 127(1) of the Act.