
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.

CHAPTER 2

Acknowledgement and requests for further information

Acknowledgement of receipt of the complaint

11.—(1) The Commissioners must ensure an acknowledgement of receipt of the complaint is sent to the complainant within the period of 60 days beginning with the date on which the Commissioners received the complaint.

(2) Within the period mentioned in paragraph (1), the Commissioners must inform each other competent authority concerned—

- (a) that the Commissioners have received the complaint, and
- (b) which language the Commissioners intend to use for communications in connection with the complaint.

(3) An acknowledgement or other information sent by the Commissioners for the purposes of this regulation must be sent electronically or otherwise in writing.

Requests by the Commissioners for further information

12.—(1) The Commissioners may make a request to the complainant for any information which the Commissioners consider may be necessary in respect of the complaint (in order to decide whether to accept or reject the complaint or otherwise).

(2) That request may only be made within the period of 90 days beginning with the date on which the complaint was received by the Commissioners.

(3) The complainant must ensure that all the information requested by the Commissioners 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 to each of the other competent authorities concerned at the same time and without delay.

(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 they must send a copy of it to each other competent authority concerned at the same time and without delay.

CHAPTER 3

Decision to accept or reject the complaint

Decision of the Commissioners to accept or reject the complaint

13.—(1) The Commissioners must, within the period mentioned in paragraph (2), decide whether—

- (a) to accept the complaint, or
- (b) to reject it.

(2) The period is 180 days beginning with the date on which the Commissioners received—

- (a) the complaint,
- (b) any information requested under regulation 12 (requests by the Commissioners for further information), or
- (c) where paragraph (3) applies, any information referred to in paragraph (4),

whichever is later.

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

(4) The information referred to 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.

(5) The Commissioners may only decide to reject the complaint if, in the opinion of the Commissioners, at least one of the following reasons applies—

- (a) the complainant did not provide to the Commissioners, in accordance with regulation 7 (information to be provided by complainant when the complaint is submitted), the information referred to in paragraphs (2) to (4) of that regulation;
- (b) the complainant did not provide to the Commissioners, in accordance with regulation 12 (requests by the Commissioners for further information), the information requested under paragraph (1) of that regulation;
- (c) there is no question in dispute to resolve;
- (d) the purported complaint was not submitted to the Commissioners in accordance with regulation 6 (submitting a complaint to the Commissioners);
- (e) where regulation 8 (complaint to be submitted to each competent authority concerned) applies, the requirements of that regulation have not been met.

(6) After the Commissioners have made a decision under paragraph (1), the Commissioners must, without delay, notify the complainant and each other competent authority concerned—

- (a) whether that decision was to accept the complaint or to reject it, and
- (b) if the Commissioners decided to reject the complaint, which of the reasons mentioned in paragraph (5) applies to that decision.

(7) The Commissioners are treated as having accepted the complaint if, in respect of it, the Commissioners failed to take a decision under paragraph (1).

(8) If, in respect of the complaint, there is no longer a question in dispute to resolve (for any reason) the complaint is treated, with immediate effect, as though the Commissioners have decided to reject it (even if the Commissioners had previously accepted the complaint or it was treated as though it was accepted).

(9) Where paragraph (8) applies, the Commissioners must, without delay, notify the complainant accordingly and provide the complainant with the reason that there is no longer a question in dispute to resolve.

(10) A decision by the Commissioners to accept the complaint under this regulation does not affect what the Commissioners may decide in relation to the resolution of the question in dispute.

CHAPTER 4

Challenging decisions to reject complaints

Appeal to competent court against decision of Commissioners to reject the complaint

14.—(1) Paragraph (2) applies where each competent authority concerned has made a decision to reject the complaint.

(2) The complainant may appeal, to the competent court, against the decision of the Commissioners to reject the complaint, and the competent court may make an order in relation to that appeal.

(3) When an appeal is made under paragraph (2) the complainant must submit evidence, to the competent court, that each competent authority concerned has rejected the complaint.

Request to set up an Advisory Commission for the purposes of giving opinions on decisions to accept and reject the complaint

15.—(1) Paragraph (3) applies where—

- (a) the Commissioners decided to reject the complaint and another competent authority concerned decided to accept it, or
- (b) the Commissioners decided to accept the complaint and another competent authority concerned decided to reject it, and the conditions in paragraph (2) are met.

(2) The conditions are, in relation to the decision to reject the complaint, under the laws of that member State concerned—

- (a) no appeal can be made against that decision,
- (b) no appeal is pending against that decision, or
- (c) the complainant has formally renounced any right of appeal.

(3) The complainant may make a request to the Commissioners to set up an Advisory Commission for the purposes of giving opinions on the decisions to accept and reject the complaint.

(4) That request—

- (a) must be made electronically or otherwise in writing, and
- (b) where paragraph (1)(b) applies, must include, or be accompanied by, a declaration made by the complainant that the conditions in paragraph (2) are met.

(5) That request must be made within the period of 50 days beginning with the date the complainant was notified of—

- (a) the decision to reject the complaint, and
- (b) the decision to accept the complaint,

whichever is later.

(6) Paragraph (7) applies if the complainant was notified of a decision to accept, or to reject, the complaint by more than one competent authority concerned on different dates.

(7) For the purposes of paragraph (5)—

- (a) the date the complainant was notified of the decision to accept the complaint is the earliest of the dates on which it was accepted, and
- (b) the date the complainant was notified of the decision to reject the complaint is the earliest of the dates on which it was rejected.

(8) The Commissioners must endeavour to set up an Advisory Commission, for the purposes mentioned in paragraph (3), within the period of 120 days beginning with the date on which a request made in accordance with this regulation was received.

(9) But the Commissioners may refuse to set up an Advisory Commission for those purposes if in any particular case—

- (a) the question in dispute does not involve double taxation,
- (b) a culpable penalty has been imposed in relation to any adjustment of income or capital to which the question in dispute relates, or
- (c) judicial or administrative proceedings have been commenced which could potentially result in such a penalty.

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

(11) If an Advisory Commission is not set up in accordance with paragraph (8), 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 on which the period mentioned in paragraph (8) ended.

(12) In paragraph (9)(a), “double taxation” has the same meaning as it has in Article 2 of the Directive.

Advisory Commission opinion on decisions to accept or reject the complaint

16.—(1) An Advisory Commission set up for the purposes of regulation 15(3) must give an opinion, in respect of the decisions of each competent authority concerned, within the period of 180 days beginning with the date it was set up.

(2) The chair of the Advisory Commission must ensure that each competent authority concerned is notified of the opinion of the Advisory Commission within the period of 30 days beginning with the date on which that opinion was given.

CHAPTER 5

Withdrawal of complaint

Withdrawal of the complaint by the complainant

17.—(1) The complainant, or a person on the complainant’s behalf, may send a notification of withdrawal of the complaint.

(2) That notification must be sent at the same time to—

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

(3) When the Commissioners receive a notification of withdrawal of the complaint, which was sent in accordance with this regulation, the complaint is withdrawn and all proceedings under these Regulations, in respect of the question in dispute, are terminated.

(4) But paragraph (3) does not apply if, at the time the Commissioners received the notification—

- (a) an Advisory Commission or an Alternative Dispute Resolution Commission has given an opinion on the question in dispute, or
- (b) the Commissioners have made a decision which resolves the question in dispute on a unilateral basis or by a mutual agreement procedure (and in each case irrespective of whether the Commissioners have given effect to it).

(5) After the Commissioners have received the notification, the Commissioners must notify each other competent authority concerned of the termination of the proceedings, without delay.

(6) And where there is more than one competent authority concerned the Commissioners must notify them at the same time.

(7) A notification of withdrawal of the complaint must be sent electronically or otherwise in writing.

(8) Paragraph (2)(b) does not apply where the complainant is an individual who, or a smaller undertaking which, is resident for tax purposes in the United Kingdom.