
STATUTORY INSTRUMENTS

2020 No. 51

The Double Taxation Dispute Resolution (EU) Regulations 2020

PART 3

Resolving a question in dispute

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.