

## Clause 39: Resolution of double taxation disputes

### Summary

1. This clause introduces statutory powers to implement the EU directive on tax dispute resolution mechanisms in the European Union and other similar international agreements.

### Details of the clause

2. Sub-section (1) inserts three new sections into Chapter 2 of Part 2 of the Taxation (International and Other Provisions) Act 2010 (double taxation relief: miscellaneous provisions).
3. New section 128A allows the Treasury to make regulations to give effect to: Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union (“the Directive”); any instrument modifying or supplementing it; and any other international agreements or arrangements connected to double taxation disputes.
4. Subsection (2) sets out an inexhaustive list of the type of provision which may be made in the regulations.
5. Subsection (3) sets out some details about the powers (including allowing the regulations to have retrospective effect and to amend other enactments).
6. Subsection (4) says that the regulations may not make a criminal offence punishable on indictment with imprisonment for more than two years.
7. Subsection (5) makes provision about Parliamentary procedure.
8. Subsection (6) defines primary legislation for the purposes of the section.
9. New section 128B applies where the regulations require the Commissioners for Her Majesty’s Revenue and Customs (HMRC) to give effect to an agreement, decision or opinion.
10. Subsection (2) requires the Commissioners to give effect to the agreement, decision or opinion irrespective of any other enactment.
11. Subsection (3) allows the Commissioners to make any appropriate adjustment by way of discharge or repayment of tax, the allowance of credit against UK tax, the making of an assessment or otherwise.
12. Subsection (4) provides that time limits in the Taxes Act do not apply to claims

relating to such an agreement, decision or opinion.

13. New section 128C permits HMRC to disclose information under international agreements to which the regulations apply.

## Background note

14. The European Council adopted Council Directive (EU) 2017/1852 on 10 October 2017 on tax dispute resolution mechanisms in the EU. Article 22 of the Directive requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 30 June 2019 at the latest.
15. The Directive was adopted following a review by the European Commission of existing dispute resolution mechanisms (bilateral double tax conventions between Member States and the EU Arbitration Convention). The review concluded that although the existing dispute resolution mechanisms worked well in practice, there was scope to improve functionality with regard to access, application, timeliness and resolution.
16. The Directive is designed to complement and strengthen rather than supplant existing dispute resolution mechanisms.
17. Double taxation can create serious obstacles for businesses operating across borders by creating excessive tax burdens leading to inefficiencies and an economic disincentive to trade. The aim of the Directive is to introduce an effective and efficient framework for the resolution of tax disputes which ensures legal certainty and a business-friendly environment for investments.
18. If you have any questions about this change, or comments on the legislation please contact Martin O'Rourke on 03000 515912 (email: [martin.o'rourke@hmrc.gsi.gov.uk](mailto:martin.o'rourke@hmrc.gsi.gov.uk)).

