

2019 No. ***

CAPITAL GAINS TAX

CORPORATION TAX

INCOME TAX

The Double Taxation Dispute Resolution (EU) Regulations 2019

Made - - - - - ***
Laid before the House of Commons ***
Coming into force - - - - - ***

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The Treasury, in exercise of the powers conferred by section 128A(1), (2) and (3) of the Taxation (International and Other Provisions) Act 2010(a), make the following Regulations.

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Double Taxation Dispute Resolution (EU) Regulations 2019 and come into force on ***.

Effect

2. These Regulations have effect in relation to any income earned or capital gained in a tax year commencing on or after 1st January 2018.

General interpretative provisions

3. In these Regulations—

“the Act” means the Taxation (International and Other Provisions) Act 2010;

“accept the complaint” means—

(a) in respect of a decision by the Commissioners to accept the complaint, a decision to accept it in accordance with regulation 13 (decision of the Commissioners to accept or reject the complaint),

(b) in respect of a decision by another competent authority concerned to accept the complaint, a decision to accept it in accordance with Article 3(5) of the Directive(b),

and in each case “accepts” and “accepted” are to be construed accordingly;

“Advisory Commission” means—

(a) to the extent it is set up by the Commissioners, an Advisory Commission set up in accordance with Part 4 (Advisory Commission: composition, procedure and costs etc) and, as the case may be—

(i) regulation 15 (request to set up an Advisory Commission for purposes of giving opinions on decisions to accept or reject the complaint), or

(a) 2010 c.8. Section 128A of that Act was inserted by section 83 of the Finance Act 2019 (c.1).

(b) “The Directive” is defined in section 128A of the Act as Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.

- (ii) Chapter 3 (resolving a question in dispute: referral to Advisory Commission) of Part 3 (resolving a question in dispute); and
- (b) to the extent it is set up by another competent authority concerned, an Advisory Commission set up in accordance with Articles 6 and 8 of the Directive;

“Alternative Dispute Resolution Commission” means—

- (a) to the extent it is set up by the Commissioners, an Alternative Dispute Resolution Commission set up in accordance with regulation 33 (setting up an Alternative Dispute Resolution Commission) and Part 5 (Alternative Dispute Resolution Commission: composition and form etc), and
- (b) to the extent it is set up by another competent authority concerned, an Alternative Dispute Resolution Commission set up in accordance with Article 10 of the Directive;

“affected person” means any person who is resident for tax purposes in a member State and whose taxation is directly affected by a question in dispute (and “affected persons” is to be construed accordingly);

“the Commission” means the Commission of the European Union;

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative;

“competent authority” means—

- (a) in relation to the United Kingdom, the Commissioners, and
- (b) in relation to a member State other than the United Kingdom, the authority designated for the purposes of the Directive by that member State,

and “competent authorities” is to be construed accordingly;

“competent authority concerned” means the competent authority of a member State concerned (and “competent authorities concerned” is to be construed accordingly);

“competent court” means—

- (a) in relation to England and Wales, the High Court or the Upper Tribunal,
- (b) in relation to Scotland, the Court of Session or the Upper Tribunal,
- (c) in relation to Northern Ireland, the High Court or the Upper Tribunal, and
- (d) in relation to a member State other than the United Kingdom, a court, tribunal or other body designated for the purposes of the Directive by that member State;

“the complaint” means the complaint submitted in accordance with Chapter 1 (submitting a complaint and its effect etc) of Part 2 (complaints about a question in dispute);

“the complainant” means the affected person who submitted the complaint, or on whose behalf another person (which may be a competent authority or any other person) submitted it, or is treated as having submitted it;

“HMRC” means Her Majesty’s Revenue and Customs;

“MAP period” has the meaning given by paragraph (4) of regulation 20 (the mutual agreement procedure);

“member State concerned” means a member State in respect of which the question in dispute relates (and “member States concerned” is to be construed accordingly);

“mutual agreement procedure” has the meaning given by paragraph (1) of regulation 20;

“on a unilateral basis”—

- (a) in respect of a decision to resolve a question in dispute by the Commissioners, means a decision to resolve it in accordance with, in relation to each other member State concerned, unilateral relief arrangements^(a), and

(a) “Unilateral relief arrangements” is defined in section 8 of the Act.

- (b) in respect of a decision to resolve a question in dispute by any other competent authority concerned, has the same meaning as it has in Article 3(5) of the Directive;

“reject the complaint” means—

- (a) in respect of a decision by the Commissioners to reject the complaint, a decision to reject it in accordance with regulation 13 (decision of the Commissioners to accept or reject the complaint),
- (b) in respect of a decision by any other competent authority concerned to reject the complaint, a decision to reject it in accordance with Article 3(5) of the Directive,

and in each case “rejects” and “rejected” are to be construed accordingly;

“Rules of Functioning” means the Rules of Functioning referred to in regulation 46(1) (the Rules of Functioning agreed by the Commissioners etc);

“smaller undertaking” means any person (other than an individual) which is not—

- (a) a large undertaking for the purposes of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, or
- (b) part of a large group for the purposes of that Directive;

“tax authority” means—

- (a) in relation to the United Kingdom, HMRC, and
- (b) in relation to any other member State, the tax authority or tax administration of that State; and

“tax year” means, in respect of income earned or capital gained, the year by reference to which tax on that income or capital may be charged in the United Kingdom or another member State, as construed in accordance with the double taxation arrangements^(a) which are, or may be, interpreted or applied in relation to the question in dispute.

The meaning of question in dispute

4.—(1) In these Regulations a “question in dispute” is the matter giving rise to, or which may give rise to, a dispute between the United Kingdom and any other member State in relation to the interpretation of, or application of, double taxation arrangements resulting in taxation not in accordance with those arrangements.

(2) And references to “the question in dispute” in these Regulations are references to the particular question in dispute in respect of which the complaint was submitted.

The meaning of resident for tax purposes

5.—(1) In these Regulations “resident for tax purposes” means, in respect of an affected person, resident for the purposes of the double taxation arrangements which are, or may be, interpreted or applied in relation to the question in dispute.

(2) An affected person is treated as a resident for tax purposes in the United Kingdom if the affected person’s residency for tax purposes is, or forms part of, the question in dispute and the affected person claims to be a resident for tax purposes in the United Kingdom in relation to it.

(a) “Double taxation arrangements” is defined in section 2(4) of the Act.

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 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 in writing and may be submitted electronically or otherwise.

(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) the names and addresses of those persons; and
- (b) the tax identification numbers used in respect of those persons in the United Kingdom and in each of the other member States concerned.

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

- (a) an explanation of why the complainant considers that there is a 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 years 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 paragraph (4) of regulation 10 (as if it were not subject to paragraph (5) of that regulation);
- (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 in support of 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 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, informs HMRC that it is such a smaller undertaking.
- (2) Where this regulation applies, paragraph (1) of regulation 8 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, in the period of 60 days beginning with the day on which it was received by the Commissioners.
- (4) For the purposes of that notification, paragraphs (2) and (3) of regulation 8 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

- 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(a) or any other enactment relating to the making of such a claim.
- (2) But nothing in these Regulations prevents affected persons from making such a claim.
- (3) The submission of the complaint has the effect of terminating proceedings referred to in paragraph (4).
- (4) The proceedings referred to are any cases in respect of the question in dispute—
- (a) which were 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 cases 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.
- (6) For the purposes of paragraph (3), the termination of the proceedings has effect, as the case may be, 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 (as the case may be)—
- (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) 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

Acknowledgement of receipt of the complaint

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

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

(2) Before the end of 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 in writing and may be sent electronically or otherwise.

CHAPTER 3

Requests for further information

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 be made in the period of 90 days beginning with the day 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 before the end of the period of 90 days beginning with the day 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 4

Decision to accept or reject the complaint

Decision of the Commissioners to accept or reject the complaint

13.—(1) The Commissioners must, in 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 day on which the Commissioners received—

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

whichever is later.

(3) Paragraph (4) applies where the complainant has brought proceedings before any particular competent court, 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 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 5

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 a competent court in the United Kingdom, against the decision of the Commissioners to reject the complaint.

(3) When an appeal is made under paragraph (2) the complainant must submit evidence, to that 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) Such a request—

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

(5) And that request must be made in the period of 50 days beginning with the day 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), in the period of 120 days beginning with the day 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) any penalty was imposed in the United Kingdom in relation to any adjustment of income or capital, to which the question in dispute relates, as a result of fraud, wilful default or gross negligence; or
- (c) judicial or administrative proceedings have been commenced which could potentially result in such penalties.

(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 a competent court in the United Kingdom—

- (a) for the purposes of regulation 45 (competent court: appointments of independent persons of standing and the chair); and
- (b) in the period of 30 days beginning with the date 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, in the period of 180 days beginning with the day 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 in the period of 30 days beginning with the day on which that opinion was given.

CHAPTER 6

Withdrawal of complaint

Withdrawal of the complaint by the complainant

17.—(1) The complainant may send, at the same time, a notification of withdrawal of the complaint to—

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

(2) But the complainant may not send such a notification of withdrawal after—

- (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).

(3) When the Commissioners receive a notification of withdrawal of the complaint, the complaint is withdrawn and for the purposes of these Regulations all proceedings, in respect of the question in dispute, are terminated.

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

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

(6) A notification of withdrawal of the complaint must be made in writing and may be made electronically or otherwise.

(7) Paragraph (1)(b) 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.

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, for the purposes of these Regulations all proceedings, 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 in the period of 180 days beginning with—

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

whichever is later.

(5) Paragraph (6) applies where the complainant had brought proceedings before any particular competent court 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 brought 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

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 before the end of 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) the date on which the Commissioners received the information mentioned in paragraph (6),

whichever is later.

(5) Paragraph (6) applies where the complainant had brought proceedings before any particular competent court 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.

(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 before the end of the period of 90 days beginning with the day 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 a competent court in the United Kingdom 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, and
- (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 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) And 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.

(4) 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.

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

(6) 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 before the end of 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 day 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—

- (a) a competent court in the United Kingdom, or
- (b) any other court (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 competent court 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 that could potentially lead to any penalty in the United Kingdom, in relation to any adjustment of income or capital, to which the question in dispute relates, as a result of fraud, wilful default or gross negligence (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) includes the suspension of 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) When the mutual agreement procedure resumes, or is treated as resumed, the MAP period continues on that date (as though that date is the date on which the MAP period was suspended).

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 provided in writing and may be provided electronically or otherwise.

(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^(a).

(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 a period of 60 days beginning on the date on which the complainant was notified in accordance with paragraph (2).

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

- (a) the Commissioners may make an application to a competent court in the United Kingdom 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.

(a) And see section 128B (giving effect to requirements under section 128A regulations) of the Act.

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—

- (a) on a unilateral basis, or
- (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 in writing and may be made electronically or otherwise.

(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 a notification under—
 - (i) paragraph (6) of regulation 13 (decision of the Commissioners to accept or reject the complaint), or
 - (ii) regulation 27 (duty to inform the complainant if dispute not resolved by mutual agreement); or
- (b) the date of the judgment—
 - (i) of a competent court in the United Kingdom following an appeal under paragraph (2) of regulation 14 (appeal to competent court against decision of Commissioners to reject the complaint), or
 - (ii) of the court (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 in 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 a competent court in the United Kingdom—

- (a) for the purposes of regulation 45 (competent court: appointments of independent persons of standing and the chair), and
- (b) in the period of 30 days beginning with 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—

- (a) a competent court in the United Kingdom, or
- (b) any other court (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 (before the end of 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 competent court 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 fraud etc penalty cases

30.—(1) Regulation 28 does not apply in cases where any penalty was imposed in the United Kingdom in relation to any adjustment of income or capital, to which the question in dispute relates, as a result of fraud, wilful default or gross negligence.

(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 in either of the following cases—

- (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 paragraph (2) of regulation 22 (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 in 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 date of the expiry of the period mentioned in paragraph (2) of regulation 22.

(3) Such an opinion must be given in writing and may be given electronically or otherwise.

(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.

(10) Nothing in this regulation prevents the Commissioners or any other person, initiating or continuing any proceedings, related to the question in dispute, which may result in any financial or other penalty.

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 paragraphs (2), (7), and (9) of regulation 28 (request to set up an Advisory Commission for the purpose of resolving the question in dispute); and
- (b) in paragraph (2) of regulation 29 (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 in cases of fraud etc) 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;
- (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 for the final resolution of the question in dispute, or 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 in 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, before the end of the period mentioned in paragraph (2), they must treat (as the case may be) 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 in 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 a competent court in the United Kingdom in respect of that failure.

(7) Paragraph (8) applies, subject to paragraph (9), if the complainant (or a person on behalf of the complainant), in 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 in the period of 60 days beginning on 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 that there was a lack of independence in accordance with that Article.

(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 a competent court in the United Kingdom in respect of that failure.

(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 given under this regulation must be in writing and may be sent electronically or otherwise.

Publication of the final decision of the competent authorities

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 the final decision is not published in its entirety 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 it 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 it if that information concerns any trade, business, industrial or professional secret or trade process, or it is contrary to public policy.

(7) The request must be made before the end of the period of 60 days beginning with the date on which the abstract of the final decision was received by the affected person.

(8) And the request must be in writing and may be submitted electronically or otherwise.

(9) The Commissioners must ensure that the Commission is notified in respect of information published under paragraph (3) before it is published and without delay.

PART 4

Advisory Commission: composition, procedure and costs etc

CHAPTER 1

Preliminary

Interpretation of Part

36. In this Part—

“independent persons of standing” means individuals—

- (a) nominated by the Commissioners, on behalf of the United Kingdom, in accordance with regulation 39 (nominations for the list of independent persons of standing), or
- (b) nominated by another member State in accordance with Article 9(1) of the Directive, and in each case “independent person of standing” is to be construed accordingly;

“list of independent persons of standing” means the list, for the purposes of Article 9(1) of the Directive, of all the independent persons of standing;

“rules for the appointment of the independent persons of standing” has the same meaning as it has in Article 8(2) of the Directive; and

“secret information” has the meaning given in paragraph (3) of regulation 49 (Advisory Commission: wrongful disclosure).

CHAPTER 2

Composition

Composition of the Advisory Commission

37. The Advisory Commission must have the following composition—

- (a) one chair;
- (b) one representative of each competent authority concerned or, if the Commissioners and each other competent authority agree, two representatives of each of them;
- (c) one of the independent persons of standing, appointed by each competent authority concerned or, if the Commissioners and each other competent authority agree, two independent persons of standing appointed by each of them.

CHAPTER 3

Representatives of the Commissioners

Representatives of the Commissioners on an Advisory Commission

38. The Commissioners may instruct any person, as the Commissioners see fit, for the purpose of that person acting as a representative of the Commissioners on an Advisory Commission.

CHAPTER 4

Independent persons of standing

Nominations for the list of independent persons of standing

39.—(1) The Commissioners must ensure (on behalf of the United Kingdom) that at least three individuals are nominated to be on the list of independent persons of standing.

(2) Those individuals must, in the opinion of the Commissioners, be competent and independent, and able to act with impartiality and integrity.

(3) The Commissioners must ensure the Commission are notified of the following information—

- (a) the names of the independent persons of standing nominated under paragraph (1);
- (b) complete and up-to-date information regarding those individuals’—
 - (i) professional and academic background,
 - (ii) competence,
 - (iii) expertise, and
 - (iv) conflicts of interest (if any).

(4) The Commissioners may ensure it is specified in the notification which of those individuals may be appointed as chair.

(5) The Commissioners may agree terms and conditions of nomination with an individual nominated under paragraph (1).

(6) The Commissioners may remove, from the list of independent persons of standing, any individual who was nominated under paragraph (1) if—

- (a) that individual is found, in the opinion of the Commissioners, not to be independent, or
- (b) the nomination of that individual is otherwise terminated in accordance with any terms and conditions of nomination.

(7) The Commissioners must ensure the Commission is notified of any changes to the list of independent persons, without delay.

Objections to nominations for the list of independent persons of standing

40.—(1) Paragraph (2) applies if the Commissioners have reasonable cause to object to any independent person of standing, who was nominated by or on behalf of another member State, being on the list of independent persons of standing due to that individual lacking independence.

(2) The Commissioners may object to that individual being on the list of independent persons of standing.

(3) If the Commissioners make such an objection they must ensure the Commission—

- (a) is notified of it, and
- (b) provided with appropriate evidence in support of it.

(4) Paragraph (5) applies if the Commission—

- (a) notifies the Commissioners of an objection to an individual, who was nominated under regulation 39(1), being on the list of independent persons of standing for reasons of lack of independence, and
- (b) provides the Commissioners with evidence in support of that objection.

(5) The Commissioners must—

- (a) investigate that objection in the period of 180 days beginning with the date the Commissioners received the notification and evidence mentioned in paragraph (4), and
- (b) decide whether to remove the individual from the list of independent persons of standing.

(6) The Commissioners must notify the Commission in respect of any action taken under paragraph (5).

Independent persons of standing and substitutes: appointments etc

41.—(1) The Commissioners must endeavour to agree, with each other competent authority concerned, the rules for the appointment of the independent persons of standing to an Advisory Commission.

(2) The independent persons of standing must be appointed by the Commissioners in accordance with those rules.

(3) Following the appointment of the independent persons of standing, substitutes are to be appointed for each of them in accordance with those rules.

(4) But if those rules are not agreed, the appointment of the independent persons of standing are to be carried out in accordance with Article 8(3) of the Directive.

(5) Where the independent persons of standing appointed to an Advisory Commission are prevented from carrying out their duties, the substitutes may carry them out.

Objections to appointments of independent persons of standing

42.—(1) The Commissioners may object, in accordance with Article 8(4) of the Directive, to an appointment of an independent person of standing.

(2) Paragraph (3) applies where a competent authority concerned (other than the Commissioners) objects, in accordance with Article 8(4) of the Directive, to an appointment of an independent person of standing.

(3) The Commissioners must ensure that any action, which the Commissioners consider is appropriate, is taken in relation to that objection.

Request for disclosure of information about an independent person of standing etc

43.—(1) Paragraph (2) applies to independent persons of standing, and the substitutes for such persons, who have been appointed to the Advisory Commission in accordance with the rules for the appointment of independent persons of standing or in accordance with Article 8(3) of the Directive.

(2) Any person to whom this paragraph applies must, if requested to do so by the Commissioners, disclose any interest, relationship, or any other matter which—

(a) is likely to affect that person's independence or impartiality, or

(b) might reasonably create an appearance of bias in the proceedings of the Advisory Commission.

(3) Any disclosure made under paragraph (2) must be made to the Commissioners, and each other competent authority concerned, without delay.

(4) Any request, and any disclosure, made under this regulation must be made in writing and may be made electronically or otherwise.

(5) The second sub-paragraph of Article 8(5) of the Directive applies, for the purposes of these Regulations, to an independent person of standing who is part of the Advisory Commission.

CHAPTER 5

The chair

Election of the chair

44.—(1) The representatives of each competent authority concerned on the Advisory Commission, and the independent persons of standing appointed to the Advisory Commission, must elect a chair to that Advisory Commission.

(2) The chair must be—

(a) named on the list of independent persons of standing; and

(b) a judge, unless the representatives of each competent authority concerned and the independent persons of standing agree otherwise.

CHAPTER 6

Appointments following application to competent court

Competent court: appointments of independent persons of standing and the chair

- 45.**—(1) This regulation applies where a complainant makes an application under—
- (a) paragraph (11) of regulation 15 (request to set up an Advisory Commission for the purposes of giving opinions on decisions to accept and reject the complaint); or
 - (b) paragraph (9) of regulation 28 (request to set up an Advisory Commission for the purpose of resolving the question in dispute).
- (2) Paragraphs (3) and (4) apply if the Commissioners failed to appoint at least one of the independent persons of standing, and a substitute for that person, in accordance with regulation 41 (independent persons of standing and substitutes: appointments etc).
- (3) A competent court in the United Kingdom may—
- (a) order the Commissioners to make those appointments, or
 - (b) make those appointments itself.
- (4) When, for the purpose of regulation 37 (composition of the Advisory Commission), there is a sufficient number of independent persons of standing, they must appoint the chair in accordance with Articles 7(1) and 8(3) of the Directive.
- (5) If those independent persons of standing fail to make that appointment within a reasonable period of time, a competent court in the United Kingdom may order them to do so.
- (6) The complainant must ensure a copy of the application mentioned in paragraph (1) is sent—
- (a) if there is more than one affected person involved in the proceedings, to the competent authority concerned in each of the member States in which the affected persons are resident for tax purposes, or
 - (b) if the complainant is the only affected person involved in the proceedings, to each competent authority concerned which has failed to appoint an independent person of standing and a substitute.
- (7) When a competent court has made a decision under this regulation, it must ensure that both the complainant and Commissioners are notified of it.
- (8) And after the Commissioners have been notified of that decision, the Commissioners must ensure that each other competent authority concerned is notified of it, without delay.
- (9) The leave of the competent court is required for any appeal from a decision of that court under this regulation.

CHAPTER 7

Rules of Functioning

The Rules of Functioning agreed by the Commissioners etc

- 46.**—(1) The Commissioners must endeavour to agree the Rules of Functioning, in respect of an Advisory Commission, with each other competent authority concerned.
- (2) The Rules of Functioning must—
- (a) in respect of an Advisory Commission set up for the purpose of resolving the question in dispute, include the information referred to in points (a) to (g) of the second subparagraph of Article 11(2) of the Directive;
 - (b) in respect of an Advisory Commission set up for the purposes of giving opinions on the decisions to accept or reject the complaint, include the information referred to in points (a), (d), (e) and (f) of that subparagraph.
- (3) After the Rules of Functioning have been agreed, the Commissioners must ensure the complainant is notified of them, without delay.

(4) That notification must include, or be accompanied by, a copy of the Rules of Functioning and the information referred to in points (b) and (c) of Article 11(1) of the Directive (if, and to the extent, it is not already included in the Rules of Functioning).

(5) That notification must be in writing and may be made electronically or otherwise.

The standard Rules of Functioning

47.—(1) The standard Rules of Functioning apply in either of the cases mentioned in paragraphs (3) and (4).

(2) The “standard Rules of Functioning” are the standard Rules of Functioning set out in Annex 1 of Commission implementing regulation (EU) 2019/652 of 24 April 2019 laying down standard Rules of Functioning for the Advisory Commission or Alternative Dispute Resolution Commission and a standard form for the communication of information concerning publicity of the final decision in accordance with Council Directive (EU) 2017/1852^(a).

(3) The case is that the Rules of Functioning have not been agreed by the Commissioners and each other competent authority concerned, and notified to the complainant, before the end of the period referred to in, as the case may be—

- (a) paragraph (8) of regulation 15 (request to set up Advisory Commission for purposes of giving opinions on decisions to accept and reject the complaint), or
- (b) paragraph (7) of regulation 28 (request to set up Advisory Commission for the purpose of resolving the question in dispute).

(4) The case is that the Rules of Functioning do not meet the requirements of regulation 46(2).

(5) Where the standard Rules of Functioning apply in a case, the independent persons of standing and the chair must—

- (a) complete the Rules of Functioning, in accordance with Article 11(4) of the Directive, and
- (b) ensure the complainant is notified of them in the period of 14 days beginning with the date on which the Advisory Commission was set up.

(6) If the independent persons of standing and the chair—

- (a) have not agreed on the Rules of Functioning, or
- (b) have not notified the complainant of them,

the complainant may apply to a competent court in order to obtain an order for the implementation of the Rules of Functioning.

(7) And where such an application is made to a competent court in the United Kingdom, that competent court may make an order for that purpose.

CHAPTER 8

Information sharing

Advisory Commission: provision of information

48.—(1) Paragraphs (2) to (4) apply if the Advisory Commission makes a request to—

- (a) any affected person,
- (b) the Commissioners, or
- (c) any other competent authority concerned,

to provide any information (including any evidence or documents) which is specified in the request by the Advisory Commission.

(2) Any of those persons who receives such a request must, if the person has possession of the requested information, provide that information to the Advisory Commission, without delay.

(a) OJ L 110/26 25.4.2019.

(3) If the person fails to provide that information, the chair of the Advisory Commission may make an application to a competent court in the United Kingdom for an order requiring the information to be provided by that person, and that competent court may make such an order.

(4) But the Commissioners, or any other competent authority concerned, may refuse to provide information to the Advisory Commission in any of the cases referred to in points (a) to (d) of Article 13(1) of the Directive.

(5) Paragraph (6) applies where—

- (a) the Commissioners, and each other competent authority concerned, agree to any information being provided by the complainant, or by any other affected person, to the Advisory Commission, and
- (b) that information may be relevant to a question in dispute and has not been requested by the Advisory Commission.

(6) That information may be provided to the Advisory Commission.

Advisory Commission: wrongful disclosure

49.—(1) The chair, independent persons of standing and all other members of an Advisory Commission must not, without the consent of the Commissioners, disclose to any other person any secret information received by them in their capacity as members of the Advisory Commission.

(2) If a person discloses any secret information in contravention of paragraph (1), section 19 of the Commissioners for Revenue and Customs Act 2005(a) (wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of such information in contravention of section 20(9) of that Act.

(3) “Secret information” means any revenue and customs information relating to a person whose identity—

- (a) is specified in the disclosure, or
- (b) can be deduced from it,

and “revenue and customs information relating to a person” has the same meaning as it has in section 19(1) of the Commissioners for Revenue and Customs Act 2005.

Affected persons: secrecy declaration and wrongful disclosure

50.—(1) Affected persons, and their representatives (if any), must undertake to treat any information (including knowledge of documents) which they receive during proceedings before the Advisory Commission as secret information and must not disclose it to any other person.

(2) Those undertakings must be made by a declaration to the Commissioners, when required by the Commissioners, during or prior to the proceedings.

(3) If any affected person, and their representative (if any), fails to make such a declaration when required to do so by the Commissioners, those persons—

- (a) are not entitled to receive any, or any more, secret information during the proceedings, and
- (b) must return any secret information they have received during the proceedings.

(4) If a person discloses any secret information in contravention of this regulation, section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of such information in contravention of section 20(9) of that Act.

(a) 2005 (c.11).

CHAPTER 9
Representation

Affected persons appearing or being represented before Advisory Commission

51.—(1) A complainant or any other affected person may, in respect of the question in dispute, make a request to the Advisory Commission to appear, or to be represented, before it.

(2) That request must be in writing and may be made electronically or otherwise.

(3) If the Commissioners, and each other competent authority concerned, consents to the request, the affected person may appear, or be represented, before the Advisory Commission.

(4) Any affected person must appear, or be represented, before an Advisory Commission if that person is requested to do so by it.

(5) Paragraph (6) applies if a person contravenes paragraph (4) by failing to appear, or to be represented, before an Advisory Commission.

(6) The chair of the Advisory Commission may make an application to a competent court in the United Kingdom for an order requiring that person to appear, or to be represented, before an Advisory Commission, and that competent court may make such an order.

CHAPTER 10
Costs

Costs of the Advisory Commission

52.—(1) The Commissioners may agree, with each other competent authority concerned, the costs of the Advisory Commission including, in particular—

- (a) the fees and expenses of the chair, and of each of the independent persons of standing, of an Advisory Commission, and
- (b) who is to pay (and in what proportion) those fees and expenses.

(2) Where the chair or an independent person of standing has acted in contravention of any of the provisions in these Regulations, or the Rules of Functioning applicable to them, the Commissioners may agree, with each of the other competent authority concerned, any reasonable reduction to those fees having regard to the contravention.

(3) Where the Commissioners, and each other competent authority concerned, do not agree otherwise, the costs of the Advisory Commission referred to in points (a) and (b) of Article 12(1) of the Directive are to be shared equally by the member States concerned.

Costs incurred by the complainant

53.—(1) The Commissioners are to have no liability to costs incurred by the complainant, or any other affected person, in relation to any proceedings brought under these Regulations.

(2) Paragraph (5) applies to the cases mentioned in paragraphs (3) and (4).

(3) The case where a notification of withdrawal of a complaint has been made by the complainant in accordance with regulation 17 (withdrawal of the complaint by the complainant).

(4) The case where—

- (a) a request under paragraph (3) of regulation 15 (request to set up an Advisory Commission for the purposes of giving opinions on decisions to accept and reject the complaint) has been made, and
- (b) the Advisory Commission has subsequently given an opinion that each competent authority concerned which rejected the complaint was correct to reject it.

(5) If the Commissioners and each other competent authority concerned agree, all or some of the costs of the Advisory Commission, referred to in regulation 52, are to be borne by the complainant.

PART 5

Alternative Dispute Resolution Commission: composition and form etc

Alternative Dispute Resolution Commission: agreement about its composition and form

54.—(1) The Commissioners may make an agreement, with each other competent authority concerned, in respect of the composition and form of the Alternative Dispute Resolution Commission (which may be the same as, or different from, that of an Advisory Commission).

(2) For example, the Commissioners may, with the agreement of each other competent authority concerned, decide to set up an Alternative Dispute Resolution Commission in the form of a committee that is of a permanent nature (which may be referred to as a Standing Committee).

(3) Where an agreement is made under paragraph (1), the Commissioners may take any action, which the Commissioners consider appropriate, to set up the Alternative Dispute Resolution Commission in accordance with that agreement.

(4) This regulation is subject to regulation 55.

Alternative Dispute Resolution Commission: application of Part 4

55.—(1) Part 4 applies to an Alternative Dispute Resolution Commission, as though it was an Advisory Commission, and as if there were the modifications in paragraph (2).

(2) It has effect as if—

- (a) in each place it occurs for “Advisory Commission” the “Alternative Dispute Resolution Commission” were substituted;
- (b) in regulation 36 (interpretation of Part), the definitions of “independent persons of standing”, “list of independent persons of standing”, and “rules for the appointment of the independent persons of standing” were omitted;
- (c) Chapters 2 (composition) and 3 (representatives of the Commissioners) were omitted;
- (d) for the heading of Chapter 4 (independent persons of standing), “Members of the Alternative Dispute Resolution Commission” were substituted;
- (e) regulations 39 (nominations for the list of independent persons of standing), 40 (objections to nominations for the list of independent persons of standing) and 41 (independent persons of standing and substitutes: appointments etc) were omitted;
- (f) in regulation 42 (objections to appointments of independent persons of standing)—
 - (i) in the heading, for “independent persons of standing” the “members of the Alternative Dispute Resolution Commission” were substituted;
 - (ii) in both places it occurs, for “an independent person of standing”, “a member of the Alternative Dispute Resolution Commission” were substituted;
- (g) in regulation 43 (request for disclosure of information about an independent person of standing etc)—
 - (i) in the heading, for “an independent person of standing”, “a member of the Alternative Dispute Resolution Commission” were substituted;
 - (ii) for paragraph (1) the following were substituted—

“(1) Paragraph (2) applies to members of the Alternative Dispute Resolution Commission appointed in accordance with regulation 49 or Article 10 of the Directive.”;
 - (iii) in paragraph (5), for “an independent person of standing who is part of the Advisory Commission”, “a member of the Alternative Dispute Resolution Commission” were substituted;
- (h) Chapters 5 (the chair) and 6 (appointments following application to competent court) were omitted;

- (i) in paragraph (2) of regulation 46 (the Rules of Functioning agreed by the Commissioners etc), sub-paragraph (b) were omitted;
- (j) in regulation 47 (the standard Rules of Functioning)—
 - (i) in paragraph (3), “as the case may be” and sub-paragraph (a) were omitted;
 - (ii) in paragraphs (5) and (6), for “the independent persons of standing and the chair”, “the members of the Alternative Dispute Resolution Commission” were substituted;
- (k) in paragraph (3) of regulation 48 (Advisory Commission: provision of information) for “the chair”, “a member” were substituted;
- (l) in regulation 49 (Advisory Commission: wrongful disclosure), for “The chair, independent persons of standing and any other members”, “Any member” were substituted;
- (m) in regulation 51 (affected persons appearing or being represented before an Advisory Commission)—
 - (i) in paragraph (6), for “The chair”, “A member” were substituted;
 - (ii) after paragraph (6), the following were inserted—
 “(7) This regulation applies in relation to the Alternative Dispute Resolution Commission unless it is agreed otherwise in the Rules of Functioning for it.”;
- (n) in regulation 52 (costs of the Advisory Commission)—
 - (i) in paragraph (1)(a), for “the chair, and of each of the independent persons of standing”, “the members” were substituted;
 - (ii) in paragraph (2), for “the chair or an independent person of standing”, “a member” were substituted;
 - (iii) after paragraph (3), the following were inserted—
 “(4) Paragraph (3) applies in relation to the Alternative Dispute Resolution Commission unless it is agreed otherwise in the Rules of Functioning for it.”; and
- (o) in regulation 53 (costs incurred by the complainant)—
 - (i) in paragraph (2), for the words after “applies to”, “the case mentioned in paragraph (3)” were substituted;
 - (ii) paragraph (4) were omitted;
 - (iii) after paragraph (5), the following were inserted—
 “(6) This regulation applies in relation to the Alternative Dispute Resolution Commission unless it is agreed otherwise in the Rules of Functioning for it.”.

Name
Name

Date Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations are for the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (“the Directive”). The power for the Treasury to make the regulations is in section 128A of the Taxation (International and Other Provisions) Act 2010 (c. 8) (“the Act”) which was inserted by section 83 of the Finance Act 2019 (c. 1).

Part 1 concerns preliminary matters. It provides for the citation, commencement, effect and interpretation provisions. The regulations come into force on ***. They have effect, as required by the Directive, in relation to income earned or capital gained in a tax year commencing on or after

1st January 2018. The power to make provision having effect in relation to periods before the regulations come into force is in section 128A(3) of the Act.

Part 2 concerns complaints in respect of questions in dispute between the Commissioners and at least one other competent authority. Those questions in dispute relate to double taxation arrangements, as defined in section 2(4) of the Act. Chapter 1 makes provision about the submission of the complaints by affected persons and the effect of doing so (including in respect to certain other proceedings in relation to double taxation arrangements). Chapter 2 provides for receipt of the complaint to be acknowledged by the Commissioners. Chapter 3 is about requests by the Commissioners for further information to be provided by the complainant. Chapter 4 makes provision about the decision of the Commissioners to accept or reject the complaint. A decision to accept the complaint is without prejudice to any particular resolution of the question in dispute. Chapter 5 provides for the challenging of certain decisions to reject complaints in domestic courts and in an Advisory Commission. Chapter 6 allows for the withdrawal of the complaint by the complainant and makes further provision about it.

Part 3 concerns the resolution of the question in dispute. Chapter 1 makes provision about the resolution of the question in dispute on a unilateral basis. Chapter 2 makes provision about the competent authorities resolving the question in dispute by mutual agreement. Chapter 3 allows for, among other things, the complainant to request that an Advisory Commission is set up to give an opinion on the resolution of the question in dispute in the event that no mutual agreement is reached. Chapter 4 provides for the Commissioners and each other competent authority concerned to be able to set up an Alternative Dispute Resolution Commission, instead of an Advisory Commission, if they agree to do so. Chapter 5 makes provision for decisions made by those authorities for the final resolution of the question in dispute, following an opinion from an Advisory Commission or Alternative Dispute Resolution Commission, including about the publication of such decisions.

Part 4 concerns, among other things, the composition, procedure, information sharing and costs connected to an Advisory Commission. Chapter 1 is for the interpretation of the Part. Chapter 2 sets out the Advisory Commission's composition. Chapter 3 provides for the appointment of representatives of the Commissioners to it. Chapter 4 makes provision in relation to the nomination of individuals to the list of Independent Persons of Standing, including objections to such nominations. Chapter 5 provides for the election of the chair and Chapter 6 makes provision about the appointments to the Advisory Commission following an application to a competent court in the United Kingdom. Chapter 7 makes provision about the Rules of Functioning of the Advisory Commission and the standard Rules of Functioning (in cases where the Rules of Functioning are not agreed by the competent authorities concerned). Chapter 8 concerns information sharing provisions including, among other things, the application of the offence of wrongful disclosure contrary to section 19 of the Commissioners for Revenue and Customs Act 2005 (c.11). Chapter 9 concerns representation before the Advisory Commission, and Chapter 10 makes provision about costs.

Part 5 concerns the composition and form etc of an Alternative Dispute Resolution Commission. It makes provision, among other things, for the Commissioners to agree with each other competent authority concerned for an Alternative Dispute Resolution Commission to have a different composition and form etc than an Advisory Commission. That is subject to the requirements of Part 4 as they are applied, with modifications, to an Alternative Dispute Resolution Commission.