



STATUTORY INSTRUMENTS.

S.I. No. 306 of 2019



EUROPEAN UNION (TAX DISPUTE RESOLUTION MECHANISMS)
REGULATIONS 2019

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I, PASCHAL DONOHOE, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Council Directive (EU) 2017/1852 of 10 October 2017¹, hereby make the following Regulations:

PART 1

Preliminary Matters

Citation

1. These Regulations may be cited as the European Union (Tax Dispute Resolution Mechanisms) Regulations 2019.

Commencement

2. These Regulations come into operation on 1 July 2019.

Interpretation

3. (1) In these Regulations -

“Act of 1997” means the Taxes Consolidation Act 1997 (No. 39 of 1997);

“ADRC” has the meaning given to it by Regulation 15;

“Advisory Commission” has the meaning given to it by Regulation 11;

“affected person” means a person –

(a) who is a resident of a Member State for tax purposes for the tax year in respect of which there is a question in dispute relating to income or capital earned in that year, and

(b) whose taxation is directly affected by the question in dispute;

“Appeal Commissioner” has the meaning given to it by section 2 of the Finance (Tax Appeals) Act 2015 (No. 59 of 2015);

“arrangement” means an arrangement made by the State with another Member State, being an agreement or convention in relation to affording relief from double taxation, having the force of law by virtue of section 826(1) of the Act of 1997, and includes the Union Arbitration Convention;

¹ OJ No. L265, 14.10.2017, p.1

“assessment” means an assessment to tax that is made under the Act of 1997;

“Commissioners” means the Revenue Commissioners;

“competent authority” means the authority designated as such by a Member State for the purposes of the Directive and, in relation to the State, means the Commissioners;

“complaint” means a complaint submitted by an affected person in relation to a question in dispute;

“Court” means the High Court;

“Directive” means Council Directive (EU) 2017/1852 of 10 October 2017² on tax dispute resolution mechanisms in the European Union;

“double taxation” means the imposition by the State and any other Member State of taxes covered by an arrangement in respect of the same taxable income or capital when it gives rise to -

- (a) an additional tax charge,
- (b) an increase in tax liabilities, or
- (c) the cancellation or reduction of losses that could be used to offset taxable profits;

“enactment” has the same meaning as in section 2 of the Interpretation Act 2005 (No. 23 of 2005);

“final decision” has the meaning given to it by Regulation 19;

“list” has the meaning given to it by Regulation 14;

“material interest”, in relation to a company, means the beneficial ownership of, or the ability to control (within the meaning of section 432 of the Act of 1997), directly or indirectly, more than 5 per cent of the ordinary share capital of the company;

“Minister” means the Minister for Finance;

“question in dispute” means the matter giving rise to a dispute between the State and a relevant Member State arising from the interpretation and application of an arrangement;

“relevant Member State” means a Member State of the European Communities, other than the State, that is a party to an arrangement to which a question in dispute relates;

“tax year” means a year of assessment, or, in the case of a company, an accounting period of the company;

“Union Arbitration Convention” means the Convention on the elimination of double taxation in connection with the adjustments of profits of associated enterprises (90/436/EEC).³

² OJ No. L265, 14.10.2017, p. 1

³ OJ No. L225, 20.8.1990, p.10

(2) A word or expression which is used in these Regulations and which is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

(3) A word or expression which is used in these Regulations and which is also used in the Act of 1997 has, subject to paragraph (2), and unless the context otherwise requires, the same meaning in these Regulations as it has in the Act of 1997.

Application of Regulations

4. (1) Subject to paragraph (2), these Regulations apply to a complaint submitted on or after the coming into operation of these Regulations relating to a question in dispute involving income or capital earned in a tax year commencing on or after 1 January 2018.

(2) These Regulations may, where the Commissioners so agree with the competent authorities of relevant Member States, apply -

- (a) to a complaint submitted before the coming into operation of these Regulations, or
- (b) to a complaint involving income or capital earned in a tax year commencing before 1 January 2018.

Scope of Regulations

5. These Regulations provide for the mechanisms to resolve disputes between the State and any other Member State arising from the interpretation and application of any arrangement.

Competent authority, compliance and delegation

6. (1) The Commissioners shall be the competent authority in the State for the purposes of the Directive and these Regulations.

(2) The Commissioners shall comply with the obligations imposed by the Directive on a competent authority of a Member State.

(3) The Commissioners may authorise any of their officers to perform any acts and discharge any functions authorised by these Regulations to be performed or discharged by the Commissioners.

Form and manner of delivery of information

7. For the purposes of these Regulations information required to be provided by an affected person to the Commissioners under these Regulations shall be provided in writing in such form and manner, including by electronic means, as may be specified by the Commissioners.

PART 2
Resolution of Tax Disputes

Provisions relating to submission of complaint

8. (1) An affected person may, in accordance with paragraph (2), submit a complaint on a question in dispute to the Commissioners requesting its resolution.

(2) A complaint shall -

- (a) be submitted to the Commissioners -
 - (i) in writing and in such form and manner as the Commissioners may specify,
 - (ii) in an official language of the State, and
 - (iii) not later than 3 years from the date of receipt of the first notification of the action resulting in, or that will result in, the question in dispute, regardless of whether the affected person has recourse to any other remedies that may be available under the law of the State or of any relevant Member State,
- (b) be accompanied by the information specified in the Schedule,
- (c) identify the competent authority of each relevant Member State, and
- (d) subject to Regulation 21, include a statement by the affected person confirming that the complaint and the information referred to in subparagraph (b) are, at the same time, being submitted to the competent authority of each relevant Member State.

(3) The Commissioners shall, not later than 2 months from the date of receipt of the complaint -

- (a) acknowledge receipt of the complaint by notice in writing to the affected person, and
 - (b) inform the competent authority of each relevant Member State of -
 - (i) the receipt by the Commissioners of the complaint, and
 - (ii) the language intended to be used by the Commissioners for their communications during the proceedings concerned.
- (4) (a) The Commissioners may, not later than 3 months from the date of receipt of the complaint, by notice in writing to the affected person, request the affected person to provide such additional information, specified in the notice, as the Commissioners consider necessary to carry out the substantive consideration of the case.

- (b) Where the Commissioners request information under subparagraph (a), the affected person shall, not later than 3 months from the date of receipt of the notice -
 - (i) provide the additional information to the Commissioners, and
 - (ii) at the same time, provide a copy of that information to the competent authority of each relevant Member State.
- (5) (a) The Commissioners shall make a decision to accept or, subject to subparagraph (c), reject the complaint, as the case may be -
 - (i) not later than 6 months from the date of receipt by them of the complaint,
 - (ii) where paragraph (4) applies, not later than 6 months from the date of receipt by them of the information provided to them under that paragraph, or
 - (iii) where the question in dispute is the subject of proceedings by the affected person in the State or in any relevant Member State, with respect to any remedy that may be available under the law of the State or that relevant Member State, as the case may be, other than under the Directive, not later than 6 months from the date on which a final judgment, order or decree of a court is delivered in those proceedings or those proceedings are suspended, discontinued or otherwise disposed of,

whichever is the latest.
- (b) The Commissioners shall give notice in writing to the affected person and the competent authority of each relevant Member State, without delay, of their decision whether to accept or, subject to subparagraph (c), reject the complaint.
- (c) The Commissioners may decide to reject a complaint where -
 - (i) the affected person has failed to provide all or any of the information referred to in paragraph (2)(b),
 - (ii) where paragraph (4) applies, the affected person has failed to provide all or any of the additional information requested within the period specified in that paragraph,
 - (iii) in their opinion, there is no question in dispute, or
 - (iv) the complaint is not submitted within the period specified in paragraph (2)(a)(iii).
- (d) Where the Commissioners decide to reject a complaint, the notice under subparagraph (b) shall set out the general reasons for that decision.
- (6) (a) The Commissioners may, not later than the date specified in clause (i), (ii) or (iii), as the case may be, of paragraph (5)(a), decide to resolve a question in dispute on a unilateral basis

without involving the competent authority of each relevant Member State.

- (b) Where subparagraph (a) applies -
 - (i) the Commissioners shall, without delay, give notice in writing to the affected person and the competent authority of each relevant Member State of the decision, and
 - (ii) the proceedings under the Directive shall be terminated.
- (7) (a) An affected person may withdraw a complaint by giving notice in writing to the Commissioners and, at the same time, to the competent authority of each relevant Member State.
- (b) All proceedings under the Directive shall be terminated with immediate effect from the date of receipt of the notice under subparagraph (a).
- (c) Where a notice under subparagraph (a) is received by the Commissioners they shall, without delay, inform the competent authority of each relevant Member State of the termination of proceedings.
- (8) (a) If for any reason a question in dispute ceases to exist, the Commissioners shall terminate all proceedings under these Regulations with immediate effect.
- (b) Where subparagraph (a) applies, the Commissioners shall, without delay, give notice in writing to the affected person accordingly and the notice shall set out the general reasons why the question in dispute ceases to exist.

(9) Where the Commissioners fail to make a decision on a complaint before the date on which the period specified in clause (i), (ii) or (iii), as the case may be, of paragraph (5)(a) ends (in this paragraph referred to as “the specified date”) -

- (a) the complaint shall be deemed to be accepted by the Commissioners on the specified date, and
- (b) the Commissioners shall, for the purposes of Regulation 9(1)(a), be deemed to have given notice to the affected person of a decision to accept the complaint on the specified date.

Mutual agreement procedure

9. (1) Where Regulation 8(6) does not apply and the Commissioners and the competent authority of each relevant Member State decide to accept a complaint, the Commissioners shall, with the competent authority of each relevant Member State, endeavour to resolve the question in dispute by mutual agreement, subject to paragraph (5), not later than -

- (a) subject to subparagraph (b), 2 years from the date of the last notification of a decision to accept the complaint, whether that decision is made by the Commissioners or a competent authority of a relevant Member State, as the case may be, or

- (b) the end of any extension of the period referred to in subparagraph (a), where the Commissioners or the competent authority of a relevant Member State, as the case may be, make a request to the competent authorities of the other relevant Member States (including the State, as the case may be) for an extension of not more than 1 year of that period and provide written justification for such an extension.

(2) For the purposes of paragraph (1), the Commissioners may, during the period referred to in subparagraph (a) or (b), as the case may be, of that paragraph, by notice in writing to the affected person, request the affected person to provide such additional information, specified in the notice, as the Commissioners consider necessary to undertake the substantive consideration of the case.

- (3) (a) Where a mutual agreement is reached in accordance with paragraph (1), the Commissioners shall, without delay give notice in writing to the affected person of the mutual agreement.

- (b) Subject to -

- (i) subparagraph (d), and

- (ii) the affected person accepting the mutual agreement and renouncing any right to any other remedy that may be available under the law of the State or of a relevant Member State relating to the question in dispute,

the Commissioners shall implement the mutual agreement in accordance with its terms as a decision that is binding on them and enforceable by the affected person, irrespective of any time limits provided for by or under the Act of 1997.

- (c) The Act of 1997 and any instrument made thereunder shall apply with any necessary modifications for the purpose of giving effect to subparagraph (b).
- (d) Where proceedings have already commenced in the State, or in a relevant Member State, in respect of any remedy referred to in subparagraph (b), the mutual agreement shall only become binding on the Commissioners and enforceable by the affected person when the affected person provides evidence to the Commissioners and the competent authority of each relevant Member State, not later than 60 days from the date on which notice of the mutual agreement was given to the affected person under subparagraph (a), that action has been taken by the affected person to discontinue those proceedings.

(4) Where a mutual agreement is not reached within the period specified in subparagraph (a) or (b), as the case may be, of paragraph (1), the Commissioners shall, without delay, give notice in writing to the affected person accordingly and the notice shall set out the general reasons for the failure to reach such an agreement.

(5) Where the question in dispute is the subject of proceedings by the affected person in the State or in a relevant Member State, with respect to any

remedy that may be available under the law of the State or that relevant Member State, as the case may be, other than under the Directive, the period of 2 years referred to in paragraph (1)(a) shall commence on the date on which a final judgment, order or decree is delivered in those proceedings or on the date on which those proceedings are suspended, discontinued or otherwise disposed of.

Decision by competent authorities to reject complaint

10. (1) Where the Commissioners decide to reject a complaint under clause (i), (ii), (iii) or (iv), as the case may be, of Regulation 8(5)(c), and the competent authority of each relevant Member State also decides to reject the complaint, the affected person may appeal the decision of the Commissioners to the Appeal Commissioners in accordance with section 949I of the Act of 1997, not later than 30 days from the date of the notice of that decision.

(2) Part 40A of the Act of 1997 shall apply, with any necessary modifications, to an appeal referred to in paragraph (1) and for the purposes of that application references in that Part to an appealable matter (within the meaning of the said Part 40A) shall be construed as references to an appeal referred to in paragraph (1).

(3) The outcome of an appeal referred to in paragraph (1) shall be considered for the purposes of Regulation 11(1)(a).

PART 3

Dispute Resolution by the Advisory Commission

Request for dispute resolution by Advisory Commission

11. (1) Subject to this Regulation and paragraphs (4) and (5) of Regulation 20, an affected person may, by notice in writing, make a request to the Commissioners and to the competent authority of each relevant Member State for the setting up of an advisory commission (in these Regulations referred to as the “Advisory Commission”), for the purposes of Article 6 of the Directive, not more than 120 days from the date of receipt of the request, where -

- (a) the complaint submitted by the affected person has been rejected by the Commissioners under clause (i), (ii), (iii) or (iv), as the case may be, of Regulation 8(5)(c) or by a competent authority of a relevant Member State under Article 5(1) of the Directive, but not by all of the competent authorities concerned, or
- (b) the Commissioners and the competent authority of each relevant Member State have accepted the complaint but have failed to reach a mutual agreement on how to resolve the question in dispute within the period specified in subparagraph (a) or (b), as the case may be, of Regulation 9(1).

(2) Where a complaint has been rejected by the Commissioners under clause (i), (ii), (iii) or (iv), as the case may be, of Regulation 8(5)(c) -

- (a) in a case where the affected person makes an appeal referred to in Regulation 10(1), paragraph (1)(a) shall not apply where -
 - (i) a decision on the appeal has not yet been made,
 - (ii) the Appeal Commissioners have decided to uphold the decision of the Commissioners to reject the complaint and that decision has been appealed and a decision on that further appeal has not yet been made, or
 - (iii) the Appeal Commissioners have decided to uphold the decision of the Commissioners to reject the complaint and, within the time for bringing an appeal against the decision of the Appeal Commissioners, no such appeal has been brought or, if such an appeal has been brought, the court has delivered its final judgment, decree or order in relation to the appeal upholding the decision of the Commissioners to reject the complaint, or the appeal has been otherwise discontinued or disposed of,

and

- (b) in a case where the affected person has not made an appeal referred to in Regulation 10(1), paragraph (1)(a) shall only apply where the affected person has renounced any right of appeal under Regulation 10(1) and a declaration to that effect has been made by the affected person in writing to the Commissioners.
- (3) A request by an affected person under paragraph (1) shall be made -
 - (a) not later than 50 days from the date on which notice has been given to the affected person under Regulation 8(5)(b) or 9(4), as the case may be, or
 - (b) where the affected person makes an appeal referred to in Regulation 10(1) against the rejection of a complaint by the Commissioners under clause (i), (ii), (iii) or (iv), as the case may be, of Regulation 8(5)(c), not later than 50 days from the later of the following dates:
 - (i) the date on which a decision on the appeal is made, or
 - (ii) where a decision on the appeal has been made and the affected person has appealed that decision (“the further appeal”), the date on which a decision is made on the further appeal.
- (4) Where the Advisory Commission -
 - (a) notifies the Commissioners under paragraph (2) of Article 6 of the Directive of its adoption of a decision under that paragraph to accept a complaint, and
 - (b) confirms that all of the requirements under Article 3 of the Directive have been satisfied,

the following provisions apply:

- (i) the Commissioners may request the competent authority of each relevant Member State to endeavour to resolve the question in dispute in accordance with Article 4 of the Directive and, where the Commissioners so request, the Commissioners shall give notice in writing to the Advisory Commission and the affected person of that request;
- (ii) where clause (i) applies, the period referred to in Regulation 9(1)(a) shall commence on the date on which the Commissioners are notified of the adoption by the Advisory Commission of its decision to accept the complaint.

Appointments by order of Court

12. (1) Where an Advisory Commission is not set up within the period specified in Regulation 11(1), the affected person may apply to the Court to set up the Advisory Commission.

(2) Where the Commissioners fail to appoint at least one independent person of standing and a substitute to an Advisory Commission, the affected person may apply to the Court to appoint an independent person of standing and a substitute from the list.

(3) Where the Commissioners and the competent authority of each relevant Member State fail to do so, the affected person may apply to the Court to appoint the 2 independent persons of standing from the list.

(4) An application under paragraph (2) or (3), as the case may be, shall be made not later than 30 days from the end of the period of 120 days from the date of receipt of the request under Regulation 11(1).

(5) A decision of the Court on an application made under paragraph (2) or (3), as the case may be, shall be final, save that, by leave of the Court of Appeal, an appeal from the decision shall lie to the Court of Appeal on a specified question of law.

Membership of Advisory Commission

13. (1) The Commissioners shall, in accordance with the rules for the appointment of the independent persons of standing and subject to the Rules of Functioning for the Advisory Commission referred to in Regulation 16 appoint the following members to the Advisory Commission -

(a) one representative of the Commissioners or, where the Commissioners and the competent authority of each relevant Member State agree, 2 such representatives, and

(b) one independent person of standing from the list or, where the Commissioners and the competent authority of each relevant Member State agree, 2 such persons.

(2) (a) The Commissioners shall agree the rules for the appointment of the independent persons of standing to the Advisory Commission with the competent authority of each relevant Member State.

(b) The Commissioners shall, in accordance with the rules for the appointment of the independent persons, appoint a substitute to take the place of any independent person of standing appointed under paragraph (1)(b) who is prevented from carrying out his or her duties.

(3) Where the Commissioners and the competent authority of each relevant Member State do not agree the rules for the appointment of the independent persons of standing, the appointment of such persons shall be carried out by drawing lots.

(4) Except where the independent person of standing has been appointed by the Court or, in the case of a relevant Member State, by the competent court or national appointing body referred to in Article 7 of the Directive, the Commissioners may object to the appointment of any independent person of standing for any of the following reasons:

- (a) for any reason agreed in advance between the Commissioners and the competent authority of each relevant Member State;
- (b) where the person is employed by, or working on behalf of, the Commissioners or the tax administration in a relevant Member State, as the case may be, or was so employed by, or worked on behalf of, the Commissioners or that tax administration at any time during the previous 3 years;
- (c) where the person has, or had at any time during the period of 5 years before the date of his or her appointment, a material interest in, or is, or was, at any time during the period of 5 years before the date of his or her appointment, an employee of, or an adviser to, any affected person concerned;
- (d) where the person does not offer a sufficient guarantee of objectivity for the settlement of the question in dispute;
- (e) where the person is, or was at any time during the period of 3 years before the date of his or her appointment, an employee of an enterprise that provides or provided tax advice or otherwise gives or gave tax advice on a professional basis.

(5) Except where the independent person of standing concerned has been appointed by the Court or, in the case of a relevant Member State, by the competent court or national appointing body referred to in Article 7 of the Directive, the Commissioners may request an independent person of standing appointed to the Advisory Commission, or any substitute for that person, to disclose any interest, relationship or any other matter that is likely to affect that person's independence or impartiality or that might reasonably create an impression of bias in the proceedings.

(6) For a period of 12 months after the date of delivery of a decision of an Advisory Commission, an independent person of standing appointed to such Advisory Commission shall not be in a situation that would have given cause to the Commissioners or the competent authority of a relevant Member State to object to his or her appointment, as provided for in paragraph (5) and Article 8(5) of the Directive, had the person been in that situation at the time of his or her appointment.

List of independent persons of standing

14. (1) The Minister shall nominate for inclusion on the list of independent persons of standing (in these Regulations referred to as "the list") 3 persons who, in the opinion of the Minister, are competent and independent and can act with impartiality and integrity (in this Regulation referred to as "nominated persons").

(2) The Minister -

- (a) shall give notice in writing to the European Commission of the names of each of the nominated persons,
- (b) shall provide to the European Commission complete and up-to-date information regarding the professional and academic background, competence and expertise of each nominated person and any conflicts of interest that each nominated person may have,
- (c) may specify, in the notice under subparagraph (a), which of the nominated persons, if any, may be appointed as a chair, and
- (d) shall give notice in writing to the European Commission, without delay, of any changes to the list.

(3) Where the Minister has reasonable cause to object to an independent person of standing remaining on the list because, in the opinion of the Minister, the person lacks independence, the Minister shall inform the European Commission and provide such evidence as he or she considers appropriate to support the objection.

(4) (a) Where a Member State objects to a nominated person under Article 9(3) of the Directive, the Minister shall, not later than 6 months from the date of receipt of the notification of the objection and supporting evidence from the European Commission under the said Article 9(3) -

- (i) take such steps as the Minister considers necessary to investigate the objection,
- (ii) consider the supporting evidence, and
- (iii) decide whether to retain on, or remove from, the list the nominated person concerned.

(b) The Minister shall give notice in writing to the European Commission of the decision under paragraph (a)(iii) without delay.

(5) (a) The Minister may at any time, remove a nominated person from the list for stated reasons if, in the opinion of the Minister, such person ceases to be independent.

(b) The Minister shall fill any vacancy that arises on the list as a consequence of the resignation or removal of a nominated person by nominating a person in accordance with paragraph (1).

(6) The Minister shall inform the European Commission in writing of any changes to the list of independent persons without delay.

Alternative Dispute Resolution Commission

15. (1) The Commissioners may agree with the competent authority of each relevant Member State to set up an Alternative Dispute Resolution Commission (in these Regulations referred to as an “ADRC”), instead of an Advisory Commission, to deliver an opinion on how to resolve a question in dispute in accordance with Article 14 of the Directive, including an ADRC that is in the form of a committee that is of a permanent nature.

(2) The Commissioners may, subject to the Rules of Functioning for the ADRC referred to in Regulation 16, agree the composition of the ADRC with the competent authority of each relevant Member State and may, subject to paragraph (3), appoint members to it.

(3) (a) The Commissioners may, for any of the reasons set out in Regulation 13(4), decide not to appoint, or may object to the appointment of, a person to the ADRC.

(b) Regulation 13(5) and (6) shall apply to a person appointed to an ADRC as those provisions apply to an independent person of standing appointed to an Advisory Commission, with any necessary modifications, and for that purpose those provisions shall be construed as if -

(i) references to an independent person of standing appointed to an Advisory Commission were references to a person appointed to an ADRC, and

(ii) the reference to a decision of the Advisory Commission were a reference to a decision of the ADRC.

(4) The Commissioners may agree with the competent authorities of each relevant Member State, as an alternative to the independent opinion process applied by the Advisory Commission under Article 8 of the Directive, any other type of dispute resolution process for application by the ADRC.

Rules of Functioning - notification obligations

16. (1) The Commissioners shall agree the Rules of Functioning for the Advisory Commission or the ADRC, as the case may be, with the competent authority of each relevant Member State, in accordance with and providing, in particular, for the matters set out in, Article 11 of the Directive and shall sign the Rules of Functioning so agreed.

(2) The Commissioners shall, not later than 120 days from the date of receipt of a request under Regulation 11(1), give notice in writing to the affected person of the following:

(a) the Rules of Functioning for the Advisory Commission or ADRC, as the case may be;

(b) the date by which the opinion on the resolution of the question in dispute shall be delivered;

(c) references to the applicable provisions of any enactment and to any applicable arrangements.

(3) Where the independent persons of standing and the chair of the Advisory Commission or ADRC, as the case may be, have not, in accordance with Article 11(4) of the Directive, completed the Rules of Functioning or notified them to the affected person, the affected person may apply to the Court for an order for the implementation of the Rules of Functioning.

Costs of proceedings

17. (1) Subject to paragraph (4), and unless the Commissioners and the competent authority of each relevant Member State agree otherwise, the expenses referred to in Article 12(1) of the Directive, shall be shared equally among the Member States concerned.

(2) Independent persons of standing appointed to the Advisory Commission or ADRC, as the case may be, shall be entitled to a reimbursement of expenses and to claim fees in accordance with Article 12(1) of the Directive.

(3) Any costs that are incurred by an affected person under these Regulations or the Directive shall not be borne by the Commissioners,

(4) The Commissioners may agree with the competent authority of each relevant Member State that the affected person shall be liable for all the costs referred to in Article 12(1) of the Directive where -

- (a) the affected person gives notice under Regulation 8(7)(a) of the withdrawal of a complaint, or
- (b) the affected person made a request under subparagraph (a) of Regulation 11(1) following a rejection of the complaint as referred to in that paragraph and the Advisory Commission decides that the competent authorities of the relevant Member States (including the State) were correct in rejecting the complaint.

Information, evidence and hearings

18. (1) Where the Commissioners so agree with the competent authority of each relevant Member State, for the purposes of the procedures under Regulation 11 or 15, as the case may be, the affected person may provide the Advisory Commission or the ADRC, as the case may be, with any information, evidence or documents that may be relevant for the purposes of -

- (a) the delivery by the Advisory Commission of a decision on the admissibility of the complaint concerned submitted under Regulation 11(1)(a), or
- (b) the delivery of an opinion by the Advisory Commission or the ADRC, as the case may be, under Article 14 of the Directive, on how to resolve the question in dispute.

(2) Subject to paragraph (3), the Commissioners and the affected person shall provide such information, evidence or documents as may be requested by the Advisory Commission or the ADRC, as the case may be.

(3) Paragraph (2) shall not be construed so as to impose an obligation on the Commissioners -

- (a) to carry out administrative measures at variance with the law of the State,
- (b) to supply information which is not obtainable under the law of the State,
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or
- (d) to supply information, the disclosure of which would be contrary to public policy.

(4) An affected person may, where the affected person requests and with the consent of the Commissioners and the competent authority of each relevant Member State, appear or be represented before the Advisory Commission or the ADRC, as the case may be.

(5) Where requested by the Advisory Commission or the ADRC, an affected person shall appear or be represented before the Advisory Commission or the ADRC, as the case may be.

(6) Information of any kind and in any form acquired, or accessed, by any member of the Advisory Commission or ADRC, as the case may be, in their capacity as such member, shall be treated as confidential and shall not be disclosed or caused to be disclosed other than in the course of discharging his or her functions as such member.

(7) An affected person and his or her representatives, if any, shall not disclose any information (including knowledge of documents) that they receive during the proceedings of the Advisory Commission or ADRC, as the case may be, and the affected person shall make a declaration to this effect to the Commissioners when requested, and in such form and manner as may be specified, by the Commissioners.

- (8) (a) A person who contravenes paragraph (6) or (7), or who makes a false declaration for the purposes of paragraph (7), commits an offence.
- (b) A person convicted of an offence under subparagraph (a) is liable -
 - (i) on summary conviction, to a class A fine, or
 - (ii) on conviction on indictment, to a fine not exceeding €10,000.
- (c) Summary proceedings for an offence under subparagraph (a) may be brought and prosecuted by the Commissioners.
- (d) Where an offence under subparagraph (a) is committed by a body corporate and is proved to have been so committed with the consent or connivance of, or to be attributable to any wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as

the body corporate, commits an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

- (e) Where the affairs of a body corporate are managed by its members, subparagraph (a) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Final decision

19. (1) Subject to paragraph (2), the Commissioners shall agree with the competent authority of each relevant Member State on how to resolve the question in dispute not later than 6 months from the date on which the opinion of the Advisory Commission or ADRC, as the case may be, is notified to them.

(2) The Commissioners may, with the competent authority of each Member State, make a decision which deviates from the opinion of the Advisory Commission or the ADRC, as the case may be.

(3) Where the Commissioners fail to reach an agreement with the competent authority of each Member State as to how to resolve the question in dispute before the end of the period specified in paragraph (1), the Commissioners shall be bound by the opinion of the Advisory Commission or the ADRC, as the case may be.

(4) The Commissioners shall give notice in writing to the affected person of the final decision on the resolution of the question in dispute (in these Regulations referred to as the “final decision”), being -

- (a) the agreement referred to in paragraph (1), or
 (b) in a case where no agreement is reached, the opinion of the Advisory Commission or the ADRC, as the case may be,

as soon as practicable, but in any case not later than 30 days from the date of the final decision.

(5) Where an affected person does not receive notice of the final decision before the end of the period specified in paragraph (4), the affected person may apply to the Court to obtain the final decision.

- (6) (a) The final decision shall be binding on the Commissioners and shall not constitute a precedent.
 (b) Subject to the affected person accepting the final decision and renouncing any right to seek any remedy that may be available under the law of the State not later than 60 days from the date on which notice of the final decision is given to the affected person under paragraph (4), the final decision shall be implemented by the Commissioners, subject to subparagraph (e), within the period specified in clause (i) or (ii), as the case may be, of subparagraph (d), irrespective of any time limits provided by or under the Act of 1997.

- (c) The Act of 1997 and any instrument made thereunder shall apply with any necessary modifications for the purpose of giving effect to subparagraph (b).
- (d) Where the implementation of a final decision -
 - (i) involves a claim by the affected person for a repayment of tax for a chargeable period or chargeable periods, the Commissioners shall make a repayment of tax for a chargeable period or chargeable periods not later than 60 days from the date on which the claim to the repayment of tax, if it were a repayment of tax due under section 865(2) of the Act of 1997, would become a valid claim (within the meaning of section 865(1) of the Act of 1997), or
 - (ii) does not involve a claim by the affected person for a repayment of tax but requires the Commissioners to amend an assessment to tax for a chargeable period or chargeable periods, the Commissioners shall amend the assessment for a chargeable period or chargeable periods not later than 60 days from the date on which the affected person has provided the Commissioners with all information reasonably required for the purposes of amending the assessment for the chargeable period.
- (e) In the case of a final decision referred to in paragraph (4)(b), the Commissioners shall not be obliged to implement the final decision where the Court in its application of the criteria under Regulation 13 or, in the case of a relevant Member State, a judicial body in its application of Article 8 of the Directive, decides that there was a lack of independence in the case of any member of the Advisory Commission or ADRC, as the case may be.
- (f) Where the Commissioners fail to implement the final decision within the period specified in clause (i) or (ii), as the case may be, of subparagraph (d), the affected person may apply to the Court for an order requiring the Commissioners to implement the final decision in accordance with its terms.

(7) In this Regulation “chargeable period” has the meaning given to it by section 321(2) of the Act of 1997.

PART 4

Supplementary and final provisions

Interaction with national law

20. (1) The submission of a question in dispute to the mutual agreement procedure or to the dispute resolution procedure shall not prevent the initiation or continuation of judicial proceedings, including criminal proceedings or

proceedings relating to the imposition of administrative fines or penalties in relation to the same matter.

(2) Where -

- (a) the question in dispute is the subject of judicial proceedings by the affected person in the State, with respect to any remedy that may be available under the law of the State, other than under the Directive, and
- (b) a final judgment, order or decree of a court is delivered in those proceedings in relation to a question,

Article 16(4) of the Directive shall apply and, for the purposes of the said application, the Commissioners shall comply with the obligations imposed on them by subparagraphs (a), (b) and (c) of the said Article 16(4).

(3) Where an affected person submits a complaint to the Commissioners under Regulation 8, any proceedings pending under the mutual agreement procedure or dispute resolution procedure under an arrangement that is being interpreted or applied in relation to the question in dispute shall come to an end with effect from the date of the first receipt of the complaint by the Commissioners or a competent authority of a relevant Member State, as the case may be.

- (4) (a) Regulation 11 shall not apply in a case where, in relation to the adjusted income or capital to which the question in dispute relates, penalties have been imposed in the State for matters equivalent, under the law of the State, to tax fraud, wilful default or gross negligence.
- (b) Where there are proceedings pending in the State that -
 - (i) may lead to the imposition of penalties referred to in subparagraph (a), and
 - (ii) are being conducted simultaneously with any proceedings under these Regulations,

the Commissioners may suspend the proceedings under these Regulations from the date of acceptance of the complaint under Regulation 8(5)(b) until the date on which a final judgment, order or decree of a court is delivered in those proceedings or those proceedings are discontinued or otherwise disposed of.

- (5) (a) Where a question in dispute does not involve double taxation the Commissioners may, on a case by case basis, decide to refuse a request by an affected person under Regulation 11(1).
- (b) Where the Commissioners make a decision referred to in subparagraph (a) applies, the Commissioners shall inform the affected person and the competent authority of each relevant Member State of the decision without delay.

Individuals and small companies

21. (1) Where the affected person is -

- (a) an individual, or
- (b) a company that qualifies as a small company (within the meaning of Council Directive 2013/34/EU),

the affected person may, notwithstanding the requirements specified in Regulations 8(2), 8(4), 8(7)(a) and 11(1), submit the complaint, information, withdrawal or request concerned, as the case may be, (in this Regulation referred to as “the communication”) to the Commissioners only.

(2) (a) Where paragraph (1) applies, the Commissioners shall -

- (i) as soon as is practicable, but not later than 2 months from the date of receipt of the communication concerned, give notice in writing to that effect, at the same time, to the competent authority of each relevant Member State of receipt of the communication, and
 - (ii) transmit a copy of any additional information received by the Commissioners under Regulation 8(4)(b) to the competent authority of each relevant Member State.
- (b) (i) Where a notice is given under subparagraph (a)(i), the affected person concerned shall be deemed to have submitted the communication to the competent authority of each relevant Member State on the date on which the notice is given.
- (ii) Where a transmission is made under subparagraph (a)(ii), the additional information concerned shall be deemed to have been received by the competent authority of each relevant Member State on the date of receipt of that additional information.

Publication of final decision

22. (1) The Commissioners may agree with the competent authority of each relevant Member State to publish the final decision in its entirety, subject to the prior consent in writing of each affected person concerned.

(2) Subject to paragraph (4), where there is no agreement or the affected person does not consent, as referred to in paragraph (1), the Commissioners shall publish an abstract of the final decision containing the following information:

- (a) a description of the issue and the subject matter,
- (b) the date,
- (c) the tax years involved,
- (d) the legal basis,
- (e) the industry sector,

- (f) a short description of the final outcome, and
- (g) a description of the method of arbitration used.

(3) For the purposes of the publication of the information referred to in paragraphs (1) and (2), the Commissioners shall use the standard form for the communication of information concerning publicity of the final decision laid down in ANNEX II to the Commission implementing Regulation (EU) 2019/652 of 24 April 2019⁴ 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.

- (4) (a) The Commissioners shall, before publishing the information referred to in paragraph (2), send a copy of the information to the affected person.
- (b) The affected person may, not later than 60 days after the date of receipt of the information under subparagraph (a), by notice in writing, request the Commissioners not to publish information that concerns any trade, business, industrial or professional secret or trade process, or that is contrary to public policy.

(5) The Commissioners shall notify the European Commission of the information to be published under paragraph (2) without delay.

⁴ OJ No. L110, 25.4.2019, p.26

SCHEDULE***Information to be contained in a complaint***

1. The following information is required by Regulation 8(2)(b) to accompany a complaint submitted by an affected person to the Commissioners:
 - (a) the name, address, tax identification number of each affected person and any other information necessary for the identification of each affected person and of any other person concerned;
 - (b) the tax year or tax years concerned;
 - (c) details of the following, including a copy of any supporting documents:
 - (i) the relevant facts and circumstances of the case, including -
 - (I) details of the structure of the transaction and the relationship between the affected person and the other parties to the relevant transactions, and
 - (II) any facts determined in good faith in a mutually binding agreement between the affected person and the Commissioners or the tax administration of a relevant Member State, where applicable;

- (ii) the nature and date of the actions giving rise to the question in dispute, including, where applicable -
 - (I) details of the same income received in the other Member State and the inclusion of such income in the taxable income in the other Member State,
 - (II) details of the tax charged or that will be charged in relation to the income referred to in subclause (I) in the other Member State, and
 - (III) the related amounts in the currencies of the Member States concerned;
- (d) reference to the applicable national rules and to the arrangement the interpretation or application of which is the subject of the question in dispute and, where more than one such arrangement is applicable, specification by the affected person of which arrangement is being interpreted in relation to the question in dispute, as that arrangement shall be the applicable arrangement for the purposes of these Regulations and the Directive;

- (e) the following, together with copies of any supporting documents:
- (i) an explanation of why the affected person considers that there is a question in dispute;
 - (ii) the details of any appeals and litigation initiated by the affected person regarding the relevant transactions and of any court decisions concerning the question in dispute;
 - (iii) a commitment by the affected person to provide timely and complete responses to all appropriate requests from, and to provide any documentation requested by, the Commissioners;
 - (iv) a copy of any final tax assessment decision in the form of a final tax assessment notice, tax audit report or other equivalent document leading to the question in dispute and a copy of any other documents issued by the Commissioners and the tax authorities of the relevant Member States with regard to the question in dispute, where relevant;
 - (v) information on any complaint submitted by the affected person under another mutual agreement procedure or dispute resolution procedure under an arrangement the interpretation or application of which is the subject of the question in dispute

and an express commitment by the affected person to abide by the provisions of Regulation 20(3), if applicable;

- (f) any specific additional information requested by the Commissioners, or the competent authority of a relevant Member State, that is considered necessary for them to undertake the substantive consideration of the particular case.



GIVEN under my Official Seal,
28 June, 2019.

PASCHAL DONOHOE,
Minister For Finance.

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