

Part 35-02-10

Guidelines on the European Union (Tax Dispute Resolution Mechanisms) Regulations 2019

This document should be read in conjunction with European Union (Tax Dispute Resolution Mechanisms) Regulations 2019 (S.I. No. 306 of 2019), and European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (S.I. No. 673 of 2020)

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This document should also be read in conjunction with the following Tax and Duty Manual:

[Tax and Duty Manual Part 35-02-08](#) - Guidelines for requesting Mutual Agreement Procedure (“MAP”) assistance in Ireland

1	Introduction	5
2	Overview of the dispute resolution framework.....	6
2.1	Scope of complaints under the Regulations	9
3	Phase 1: Making a complaint about a question in dispute	9
3.1	Who can make a complaint under the Regulations?.....	9
3.2	Submission of complaint	10
3.3	Special provisions for individuals and smaller companies.....	10
3.4	Request for additional information	11
3.5	Timeframe for decision to accept or reject a complaint	11
3.6	Reasons to reject a complaint	12
3.7	Decision on the acceptance or rejection of a complaint	12
3.8	Resolving a question in dispute on a unilateral basis	13
3.9	Appeal against the rejection of a complaint.....	13
3.9.1	Appeal against Revenue’s decision to reject the complaint	13
3.10	Termination of a complaint	14
3.10.1	Withdrawal of complaint by an affected person	14
3.10.2	Revenue’s decision to terminate proceedings.....	15
4	Phase 2: Resolution of a tax dispute by mutual agreement	15
4.1	Mutual Agreement Procedure (MAP).....	15
4.2	Mutual agreement reached between the competent authorities	16
4.3	Competent authorities’ failure to reach mutual agreement	16
5	Phase 3: Resolution of a dispute by an Advisory Commission	16
5.1	Request to set up an Advisory Commission	16
5.2	The Advisory Commission.....	17
5.2.1	Composition.....	17
5.2.2	Appointments to the Advisory Commission	17

5.2.3	Election of Chair of the Advisory Commission	17
5.3	Setting up an Advisory Commission	18
5.4	Resolution of a question in dispute by an ADRC	18
5.5	Decision or Opinion of Advisory Commission or ADRC	19
5.5.1	Advisory Commission decision to accept or reject a complaint	19
5.5.2	Advisory Commission or ADRC opinion on the resolution of a question in dispute	20
6	Phase 4: Final decision on the resolution of a question in dispute	20
6.1	When is a decision final under the Regulations?	20
6.2	Notification of the final decision	20
6.3	Obligation on the affected person.....	21
6.4	Implementation of the final decision	21
6.5	Publication of the final decisions.....	22
7	The list of Independent Persons of Standing	22
7.1	Ministerial nominations to the list	22
7.2	Objections to persons nominated	23
8	Rules of Functioning of the Advisory Commission or ADRC.....	23
8.1	Agreement on rules of functioning.....	23
8.2	Notification of the rules of functioning	23
9	Costs.....	24
9.1	Costs borne by the competent authorities.....	24
9.2	Costs borne by the affected person	24
10	Confidentiality	24
11	Frequently Asked Questions.....	26
11.1	What is a competent authority of a Member State?.....	26
11.2	What taxes are covered by the Regulations?	26

11.3	What is a question in dispute?	26
11.4	What is the interaction between the dispute resolution process in the Regulations and the MAP article of a DTA?.....	27
	Appendix I: Contact details when submitting a complaint to Revenue	28
	Appendix II: Information and documentation required to be submitted in or with a complaint	29
	Appendix III: Glossary of terms	32
	Appendix IV: MAP process under the Regulations.....	34
	Appendix V: Examples of complaints about a “question in dispute”	35
	Appendix VI: Unofficial Consolidated Regulations	37

1 Introduction

The European Union's Directive on tax dispute resolution mechanisms ((EU) 2017/1852 of 10 October 2017) (the "Directive") sets out a framework for the resolution of tax disputes between Ireland and one or more EU Member States arising from the interpretation or application of double taxation agreements and the EU Arbitration Convention¹. It builds on existing dispute resolution mechanisms contained in double taxation agreements and the EU Arbitration Convention and provides for a more streamlined approach to the effective resolution of tax disputes which could give rise to double taxation for taxpayers. It does not replace or amend Ireland's double taxation agreements or the EU Arbitration Convention. The Directive aims to provide taxpayers, both individuals and companies, with a more effective and efficient framework for the resolution of tax disputes.

The Directive has been transposed in Ireland by:

- European Union (Tax Dispute Resolution Mechanisms) Regulations 2019 (S.I. No. 306 of 2019), and
- European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (S.I. No. 673 of 2020),

(collectively, the "Regulations").

The Regulations:

- (a) introduce a new dispute resolution procedure to resolve tax disputes between Ireland and one or more EU Member States arising from the interpretation or application of double taxation agreements and the EU Arbitration Convention;
- (b) set out the time limits for resolving tax disputes under these procedures;
- (c) establish the terms and conditions for the operation of the procedures;
- (d) set out the rights and obligations of taxpayers seeking to avail of the procedures.

The purpose of this manual is to provide guidance on the dispute resolution procedures contained in the Regulations. An unofficial consolidated version of the Regulations that has no legal standing has been included at [Appendix VI](#) for illustrative purposes only.

¹ Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises – [90/436/EEC](#), referred to as the EU Arbitration Convention.

2 Overview of the dispute resolution framework

The Regulations provide that, in connection with a dispute over the interpretation or application of a double taxation agreement (“DTA”) between Ireland and another EU Member State or in relation to the EU Arbitration Convention, in particular disputes leading to double taxation of income or capital (referred to as a ‘**question in dispute**’):

- a person who is a resident of an EU Member State and whose taxation is directly affected by the question in dispute (referred to as an ‘**affected person**’ – see [3.1](#)),
- may submit a **complaint** on the question in dispute to the competent authorities of the EU Member States involved, which in the case of Ireland is the Revenue Commissioners (Revenue), effectively seeking them to resolve the dispute (see [2.1](#) for details of the types of complaints that may be made under the Regulations).

The dispute resolution process set out in the Regulations can broadly be divided into the following four phases:

Phase 1: Making a complaint about a question in dispute

An affected person who wishes to make a complaint on a question in dispute in Ireland is generally required to submit that complaint, including certain prescribed documentation and such other supporting documentation as is necessary, to Revenue and to each competent authority of the other Member States involved. However, if the affected person is an individual or a smaller company (see [3.3](#) for definition) who is tax resident in Ireland, the affected person is only required to submit the complaint to Revenue and Revenue will inform the other competent authorities involved². The time frame to submit the complaint is 3 years from the date the affected person is first notified of the action resulting in, or that will result in, a question in dispute.

The competent authorities must decide on the acceptance or rejection of the complaint within a period of 6 months from the date of receipt of the complaint or, if later, 6 months from the date of receipt of additional information, if any, requested by another competent authority involved in connection with the complaint. During this time, a competent authority may decide to resolve the dispute on a unilateral basis without involving the other competent authorities involved. In the absence of any decision within this 6-month time frame, the complaint is deemed to have been accepted.

Where Revenue decides to resolve the dispute unilaterally, it will notify the affected person and the other competent authorities involved and proceedings under the Regulations will come to an end.

² A question in dispute may involve Ireland and one or more other EU Member State. Where only one other Member State is involved, references in this manual to the other competent authorities involved should be read as a reference to the other competent authority involved.

Where none of the competent authorities resolve the dispute unilaterally, then the next steps of the procedure depend on whether the competent authorities accept or reject the complaint as follows:

- Where all of the competent authorities accept the complaint, they will endeavour to resolve the dispute by Mutual Agreement Procedure within two years (may be extended by 1 year) (**Phase 2** – see below and [section 4](#)).
- Where Revenue rejects the complaint and the other competent authorities involved accept the complaint, or vice versa, the affected person can request that an Advisory Commission is set up to deliver a decision on whether the complaint should be accepted or rejected (**Phase 3** – see below and [section 5](#)).
- Where all of the competent authorities involved reject the complaint, the affected person can appeal Revenue’s decision to the Tax Appeals Commission (see [3.9.1](#)).

Further detailed information on Phase 1 of the dispute resolution process is set out in [section 3](#) of this manual.

Phase 2: Resolution of a tax dispute by Mutual Agreement Procedure (MAP)

Where all the competent authorities involved accept the complaint, they will endeavour to resolve the question in dispute by the mutual agreement procedure (MAP) provided for in the Regulations. The time frame for completion of the MAP process is 2 years beginning on the date the complaint is accepted, although this may be extended by 1 year on a justified request by a competent authority.

Where a mutual agreement is reached between Revenue and the other competent authorities involved under the MAP, Revenue will notify the affected person in writing of the mutual agreement.

Where the affected person accepts the agreement and renounces any other legal remedy that may be available, then that agreement becomes binding and is enforceable by the affected person on the Member States concerned. If any such legal proceedings have commenced, the agreement will become binding and enforceable once the affected person has provided evidence to Revenue and the other competent authorities, within 60 days of receiving notice from Revenue that a mutual agreement has been reached, that action has been taken by the affected person to discontinue those proceedings.

If no mutual agreement is reached between Revenue and the other competent authorities involved under the MAP, Revenue will notify the affected person in writing accordingly, together with the general reasons for the failure to reach such an agreement. In these circumstances, the affected person may, under Phase 3 of the dispute resolution process, request the set-up of an Advisory Commission.

Further detailed information on Phase 2 of the dispute resolution process is set out in [section 4](#) of this manual.

Phase 3: Dispute Resolution by an Advisory Commission

Provision is made in the Regulations for an affected person to request the setting up of an independent **Advisory Commission** to give an opinion on how to resolve a question in dispute where the competent authorities concerned fail to reach agreement under a MAP within the specified time period.

An affected person can also request that an Advisory Commission is set up to give a decision on whether to accept or reject a complaint, where at least one but not all of the competent authorities involved have rejected the complaint at [Phase 1](#). If the Advisory Commission decides to accept the complaint, then [Phase 2](#) and, where necessary, [Phase 3](#) of the dispute resolution process will apply.

An Advisory Commission is comprised of representatives from the relevant competent authorities as well as independent persons of standing drawn from a list maintained by the European Commission (see [section 7](#)).

As an alternative to the setting up of an Advisory Commission to resolve a question in dispute where the competent authorities fail to reach agreement under the MAP process, the competent authorities involved may agree to set up an **Alternative Dispute Resolution Commission (“ADRC”)** instead (see [5.4](#)). The ADRC performs the same function as the Advisory Commission in that it is required to deliver an opinion on how to resolve a question in dispute. However, the ADRC may differ in structure from the Advisory Commission in the way in which it discharges this function – for example, in terms of the composition of its representatives and in terms of the dispute resolution process or technique applied to resolve the question in dispute.

Further information on this phase of the dispute resolution process is set out in [section 5](#) of this manual.

Phase 4: Final decision on the question in dispute

Following the delivery of an opinion of an Advisory Commission or an ADRC on how to resolve a question in dispute, Revenue and the other competent authorities involved have six months to agree on how to resolve the question in dispute. If Revenue and the other competent authorities involved do not reach agreement within that timeframe, the opinion of the Advisory Commission or ADRC, as the case may be, becomes binding and each competent authority is obliged to implement that decision. Subject to agreement with the affected person the decision or an abstract of the decision will be published online.

Further information on this phase of the dispute resolution process is set out in [section 6](#) of this manual.

2.1 Scope of complaints under the Regulations

The Regulations apply to a complaint in respect of a question in dispute—

- (a) involving income or capital earned in a tax year commencing on or after 1 January 2018, and
- (b) which is submitted, in accordance with the Regulations, to Revenue on or after 1 July 2019.

The complaint must be submitted to Revenue and where applicable³ to the other competent authorities involved within 3 years of the date of receipt of the first notification of the action resulting in, or that will result in, the question in dispute. This includes disputes that give rise to double taxation.

For the purposes of this process, “double taxation” occurs when two or more Member States claim the right to tax the same income or capital of an individual or company. This can occur where there is a divergence on the interpretation or application of a provision of a DTA or the EU Arbitration Convention.

When double taxation occurs, it may give 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.

Subject to agreement between all the competent authorities concerned, the Regulations may be applied to a complaint submitted before 1 July 2019, or to a complaint involving income or capital earned in a tax year commencing before 1 January 2018.

3 Phase 1: Making a complaint about a question in dispute

3.1 Who can make a complaint under the Regulations?

The first requirement in the process is that a complaint may only be initiated by an affected person (i.e., an individual or a company), or their representative (references to an affected person in this manual shall be treated as including a representative of that person, where that representative has submitted the complaint on behalf of the affected person). An affected person means a person—

- (a) who is resident in 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

³ An individual or small company who is tax resident in Ireland is required to submit the complaint to Revenue only and Revenue will inform the other competent authorities involved (see [3.2](#)).

- (b) whose taxation is directly affected by the interpretation or application of a DTA or the EU Arbitration Convention between the State and another EU Member State(s).

3.2 Submission of complaint

The affected person must simultaneously submit their complaint, in writing, to Revenue and the other competent authorities involved. However, where the affected person is an individual or a smaller company who is tax resident in Ireland, the affected person is only required to submit the complaint to Revenue, and Revenue will inform the other competent authorities involved of the complaint (see [3.3](#)).

The complaint must be in writing and, at a minimum:

- (a) contain the information listed in [Appendix II](#),
- (b) specify the competent authorities involved, and
- (c) be accompanied by a statement confirming whether the information listed in [Appendix II](#) has been simultaneously submitted to the other competent authorities involved.

The affected person has 3 years to submit the complaint. The 3-year time period starts on the date the affected person is first notified of the action resulting in, or that will result in, the question in dispute. For example, the first notification would include a notice of assessment issued from Revenue or an equivalent document issued by a competent authority of another Member State.

The complaint must be submitted in either Irish or English in the manner prescribed in [Appendix II](#). Without proper information and documentation, Revenue will be unable to accept the complaint.

Revenue has 2 months from the date of receipt of the complaint to acknowledge receipt of the complaint and to inform the other competent authorities involved that—

- (a) a complaint has been received, and
- (b) English is the preferred official language for the proceedings.

3.3 Special provisions for individuals and smaller companies

Where the affected person is an individual or a smaller company who is tax resident in Ireland, the affected person is only required to submit the complaint and accompanying information to Revenue and Revenue will inform the other competent authorities involved of the complaint. Smaller companies should, when submitting a complaint, inform Revenue that it is a smaller company. A smaller company is one which is not a large undertaking and does not form part of a large group (both as defined in Directive 2013/34/EU of the European Parliament and of the Council).

A smaller company for the purposes of this guidance means a company that, on its balance sheet date, does not exceed at least two of the following three criteria:

- (a) net turnover of €40 million;
- (b) balance sheet total of €20 million;
- (c) average number of employees of 250.

In addition, to be regarded as a smaller company, the company must not form part of a large group. For the purposes of this manual, large groups are groups consisting of parent and subsidiary undertakings to be included in a consolidation and which, on a consolidated basis, exceed the limits of at least two of the following three criteria on the balance sheet date of the parent undertaking:

- (a) net turnover of €40 million;
- (b) balance sheet total of €20 million;
- (c) average number of employees of 250.

3.4 Request for additional information

As Revenue and the other competent authorities involved review the complaint, they may, within 3 months of the date of receipt of the complaint, request the affected person to provide additional information which is relevant to the complaint.

The affected person is obliged to provide the additional information within 3 months of receiving the request. The information supplied must be accurate and complete. The affected person must, at the same time as the information is provided to Revenue, provide a copy of the same information to the other competent authorities involved. In the case of an individual or smaller company (see [3.3](#)) Revenue will provide the information to the other competent authorities on behalf of the affected person. Failure to supply the information specified may result in the rejection of the complaint.

3.5 Timeframe for decision to accept or reject a complaint

Revenue will independently decide whether to accept or reject the complaint by the later of the following dates:

- (a) 6 months from the date of receipt of the complaint,
- (b) 6 months from the date of receipt of additional information, if any, requested by Revenue, or
- (c) where the question in dispute is the subject of alternative proceedings by the affected person, 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.

If Revenue fails to decide on the admissibility of a complaint within the appropriate timeframe, then the complaint is deemed to have been accepted by Revenue.

3.6 Reasons to reject a complaint

A complaint may be rejected if-

- (i) it does not contain the specified information listed in [Appendix II](#);
- (ii) a request by Revenue for additional information is not provided within 3 months of receiving the request;
- (iii) there is no question in dispute (see [11.3](#));
- (iv) the complaint is not submitted within the 3-year time period; or
- (v) there is a failure to provide a statement confirming that the complaint and supporting documentation has been simultaneously supplied to the other competent authorities involved.

3.7 Decision on the acceptance or rejection of a complaint

The date that the complaint is accepted is relevant for the purposes of computing the 2-year time period allocated to competent authorities to resolve the question in dispute in [Phase 2 \(section 4\)](#) of the process.

Revenue will notify the affected person and each of the competent authorities involved in writing of its decision to accept or reject the complaint. Where Revenue decides to reject the complaint, the general reasons (see [3.6](#)) for the rejection will be set out.

- If the complaint is accepted by Revenue and all of the other competent authorities involved the process will proceed to **Phase 2 Resolution of a tax dispute by Mutual Agreement** ([section 4](#)).
- If the complaint is rejected by Revenue and is accepted by another competent authority involved, or vice versa, the affected person can request the set-up of an Advisory Commission to give its decision on the admissibility, or otherwise, of the complaint. The process will move to **Phase 3 Resolution of a dispute by an Advisory Commission** ([section 5](#)).
- If the complaint is rejected by Revenue and all of the other competent authorities involved, the affected person can appeal Revenue's decision to reject the complaint to the Tax Appeals Commission (see [3.9.1](#)).

Should the affected person exercise this right to appeal and the Appeal Commissioners decide in favour of the affected person then the affected person may request the set-up of an Advisory Commission to decide on the admissibility of the complaint. The process will then move to **Phase 3 Resolution of a dispute by an Advisory Commission** ([section 5](#)).

3.8 Resolving a question in dispute on a unilateral basis

Where Revenue accepts the complaint, it may decide to resolve the question in dispute on a unilateral basis. A decision to resolve a question in dispute on a unilateral basis must be made within the time-limits set out in subparagraphs (a)-(c) of paragraph [3.5](#) above.

Where Revenue decides to resolve the question in dispute on a unilateral basis it will, without delay, notify the affected person and the other competent authorities involved of its decision. Following that, all proceedings under the Regulations will be terminated.

3.9 Appeal against the rejection of a complaint

Where Revenue and each of the competent authorities involved all reject the complaint, the affected person may appeal the competent authorities' decision in accordance with national rules.

An affected person who exercises this appeal right is prevented from making a request for the set-up of an Advisory Commission (see [5.1](#)) to adopt a decision on the acceptance of the complaint where:

- (a) the decision is still under appeal according to the laws of one of the Member States concerned;
- (b) the decision can still be further appealed according to the appeal procedure of one of the Member States concerned; or
- (c) in the event that an appeal upholds the decision of the competent authority to reject a complaint, it is not possible to derogate from the decision of the relevant court or other judicial body in any of the Member States concerned.

However, where the decision of the appeal is in favour of the affected person, then one of the conditions under which an affected person may request the set-up of an Advisory Commission will have been met and [Phase 3](#) may apply.

3.9.1 Appeal against Revenue's decision to reject the complaint

An affected person may appeal Revenue's decision to reject the complaint to the TAC in circumstances where each of the other competent authorities involved have also decided to reject the complaint. The appeal must be made within 30 days of the notice of the Revenue decision to reject the complaint.

The provisions of Part 40A of the Taxes Consolidation Act 1997 ("TCA 1997") will apply for the purposes of making an appeal. Part 40A covers various aspects of the appeal hearing and deals with, *inter alia*, who may attend, who represents Revenue and how the Appeal Commissioners deal with appeals.

To make an appeal, the affected person must complete and send a Notice of Appeal form to the TAC⁴. This form is available on the [Tax Appeals Commission](#) website.

⁴ <http://www.taxappeals.ie/en/notice-of-appeal>

Where the Appeal Commissioners agree that the complaint should be accepted, then one of the conditions under which an affected person may request the set-up of an Advisory Commission will have been met (see [Phase 3](#)).

Where the Appeal Commissioners agree with Revenue's decision to reject the complaint, and this is not further appealed within the relevant time limits for making such an appeal, the decision shall stand.

The diagram below summarises the process that takes place where an affected person appeals a decision by Revenue to reject a complaint where another competent authority has also rejected the complaint.

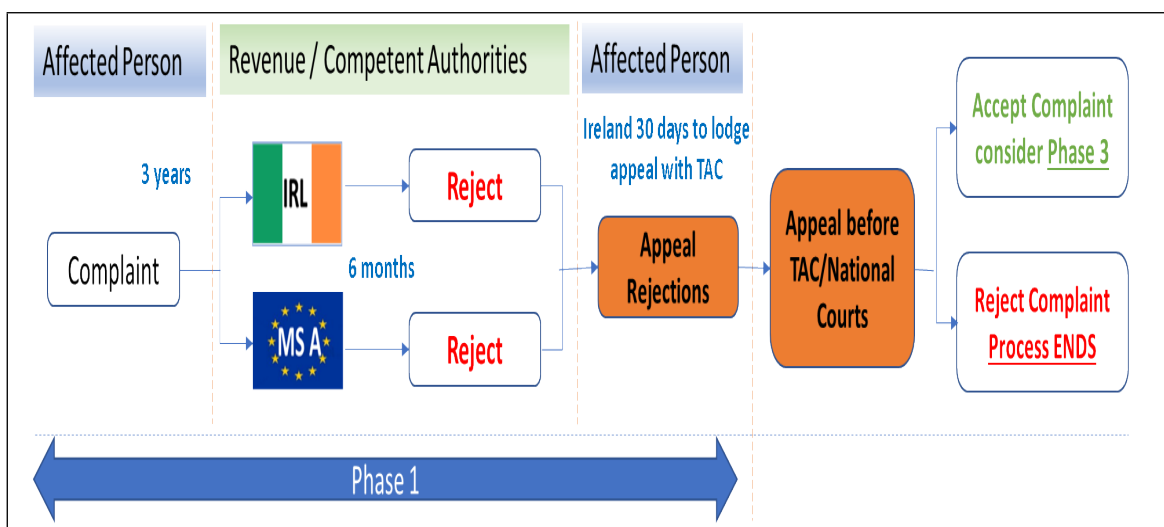


Figure 1: Process that takes place where an affected person appeals a decision by Revenue

3.10 Termination of a complaint

3.10.1 Withdrawal of complaint by an affected person

An affected person may, at any time, withdraw their complaint by notice in writing to Revenue and, at the same time, to the other competent authorities involved. The requirement to inform the other competent authorities involved does not apply where the affected person is an individual or a smaller company (see [3.3](#)).

Where a complaint is withdrawn by an affected person, proceedings under the Regulations will be terminated with immediate effect. Revenue will—

- inform the other competent authorities involved of the termination of proceedings, and
- agree with the other competent authorities involved the costs, if any, that the affected person is liable to pay following the withdrawal of the complaint (see [9.2](#)).

3.10.2 Revenue's decision to terminate proceedings

Revenue will terminate all proceedings under the Regulations with immediate effect where:

- (a) a question in dispute ceases to exist, or
- (b) Revenue decides to resolve the question in dispute on a unilateral basis, (see [3.8](#)).

In such circumstances Revenue will, without delay, inform the affected person of the decision to terminate the proceedings and will set out the general reason for the termination.

4 Phase 2: Resolution of a tax dispute by mutual agreement

Where the complaint is accepted by each competent authority involved and none of the relevant competent authorities involved have decided to resolve the question in dispute unilaterally, Revenue will endeavour to resolve the question in dispute by mutual agreement procedure with the other competent authorities involved.

Revenue Tax and Duty Manual [Part 35-02-08](#)⁵ provides information on the application of the mutual agreement procedure ("MAP") in Ireland. The following explains how a MAP applies under the Regulations.

4.1 Mutual Agreement Procedure (MAP)

A MAP is a means through which competent authorities consult with each other to resolve a question in dispute. Once the MAP is initiated, Revenue and the other competent authorities involved have two years to resolve the question in dispute. The two-year period starts on the date –

- (a) of the last notification of a decision to accept the complaint, where all competent authorities involved have either accepted or are deemed to have accepted the complaint;
- (b) Revenue is notified of the decision of an Advisory Commission to accept the complaint;
- (c) on which a final judgement, order or decree is delivered in proceedings regarding other remedies undertaken in relation to the question in dispute; or
- (d) on which ongoing proceedings regarding other remedies undertaken in relation to the question in dispute are suspended, discontinued or otherwise disposed of;

whichever is later.

The two-year period can be extended by up to one year at the request of one of the competent authorities involved.

⁵ Revenue Tax and Duty Manual [Part 35-02-08](#)

During the MAP phase, Revenue may request additional information from the affected person. An affected person is expected to cooperate fully with Revenue by providing the additional information without delay.

4.2 Mutual agreement reached between the competent authorities

If a mutual agreement under a MAP is reached between Revenue and the other competent authorities involved, Revenue will notify the affected person in writing of the agreed outcome and the requirements necessary to give effect to that agreement.

If the affected person is pursuing alternative remedies to resolve the question in dispute in Ireland or in another Member State, the mutual agreement will only become binding on Revenue and enforceable by the affected person when those proceedings are discontinued and the affected person accepts the agreement. The affected person must, within 60 days from the date of the notification of the agreement, provide evidence to Revenue and the other competent authorities involved that such proceedings have been discontinued.

If the affected person accepts the MAP decision and ceases all alternative remedies, the decision is then binding and enforceable. Revenue will implement the agreement without delay, irrespective of any time limits provided for in the TCA 1997.

At this point all proceedings under the Regulations will come to an end.

4.3 Competent authorities' failure to reach mutual agreement

If Revenue and the other competent authorities involved fail to reach agreement under a MAP within the specified time period, Revenue will notify the affected person in writing and set out the general reasons for the failure to reach such an agreement.

The affected person has the option to request that an Advisory Commission is set up to give its opinion on how to resolve the question in dispute and the process moves to Phase 3.

5 Phase 3: Resolution of a dispute by an Advisory Commission

5.1 Request to set up an Advisory Commission

An Advisory Commission is an independent panel set up at the request of an affected person to review and deliver –

- (a) a decision on the acceptance of a complaint where one but not all of the competent authorities involved have rejected the complaint at [Phase 1](#), or
- (b) an opinion on how to resolve a question in dispute where the competent authorities involved have failed to reach a mutual agreement under a MAP at [Phase 2](#) within the specified time period.

An affected person's right to request to set up an Advisory Commission to deliver a decision on the acceptance of a complaint will only apply where –

- (a) an appeal has not been made or is pending against the decision to reject the complaint (see [3.9](#)), and

- (b) the affected person has made a declaration in writing to Revenue stating that they have renounced their right to appeal.

The request to set up an Advisory Commission must be in writing and must be made within 50 days from the date the affected person was notified of the—

- (a) decision to reject the complaint in Phase 1 of the process, or
- (b) failure to reach an agreement under a MAP in Phase 2 of the process.

5.2 The Advisory Commission

5.2.1 Composition

An Advisory Commission will consist of:

- (a) one chair;
- (b) one representative (or two representatives on agreement) from each of the competent authorities involved; and
- (c) one independent person of standing (or two persons on agreement) to be appointed by each of the competent authorities involved and selected from a list of independent persons of standing maintained by the European Commission (see [section 7](#)).

5.2.2 Appointments to the Advisory Commission

The independent persons of standing will be selected from the list maintained by the European Commission (see [section 7](#)). As outlined above, each relevant competent authority will select one (or two) persons and a substitute from this list for appointment to the Advisory Commission.

Where Revenue fails to appoint an independent person of standing and a substitute to the Advisory Commission, the affected person may apply to the High Court to appoint the independent person of standing and a substitute from the list.

In the event that all competent authorities involved each fail to select and appoint an independent person of standing and a substitute to the Advisory Commission, the affected person can apply to the High Court to appoint the requisite number i.e., two independent persons of standing from the list.

5.2.3 Election of Chair of the Advisory Commission

The chair will be –

- (a) an independent person of standing selected from the European Commission list, and
- (b) be a judge unless the representatives of Revenue and of the other competent authorities involved agree otherwise.

In the event that the majority of the independent persons of standing of the Advisory Commission have been appointed by the High Court (see [5.2.2](#)) those independent persons of standing will appoint the chair of the Advisory Commission by drawing lots from the list.

5.3 Setting up an Advisory Commission

Revenue has 120 days from the date of receipt of the request to set up an Advisory Commission.

Revenue can refuse to or suspend the set-up of an Advisory Commission where—

- (a) penalties have been imposed in relation to the adjustment of income or capital to which the question in dispute relates, and where those penalties have been imposed for matters equivalent to tax fraud, wilful default, or gross negligence,
- (b) proceedings are pending in the State which could potentially lead to such penalties, or
- (c) the question in dispute does not involve double taxation.

In the event that an Advisory Commission is not set up within 120 days of making a valid request to Revenue, the affected person may apply to the High Court to set up the Advisory Commission. An application to the High Court must be made within 30 days after the expiry of the 120-day period. The High Court will appoint the independent persons of standing from the list.

5.4 Resolution of a question in dispute by an ADRC

Revenue, in conjunction with the other competent authorities involved, may agree to set up an Alternative Dispute Resolution Commission (ADRC), in lieu of an Advisory Commission to provide an opinion on how to resolve a question in dispute. An ADRC cannot be set up to provide a decision on the acceptance of a complaint.

An ADRC is an independent panel, set up in a similar fashion to, and performs the same function as, an Advisory Commission. However, it differs in structure from the Advisory Commission in terms of the composition of its representatives and it can apply a wider range of dispute resolution processes or techniques to resolve the question in dispute, for example it could apply the ‘final offer’ arbitration process known as ‘last best offer’ arbitration.

Where an ADRC is set up, in lieu of an Advisory Commission, it will give an opinion on how to resolve a question in dispute. The rules and procedures that apply to an Advisory Commission are modified to apply to an ADRC. Some notable differences include –

- the fact that an affected person cannot request the set-up of an ADRC, and
- that the dispute resolution processes adopted by the ADRC are wider in scope than those that are available to an Advisory Commission.

The composition of the ADRC is agreed between Revenue and the other competent authorities involved. The ADRC may differ regarding its composition and form from the Advisory Commission (see [5.2.1](#)). Individuals appointed to the ADRC will be subject to the same independence and confidentiality requirements that apply to the appointment of independent persons of standing.

5.5 Decision or Opinion of Advisory Commission or ADRC

An Advisory Commission must, within 6 months of the date of its establishment, give –

- (a) a decision on whether to accept or reject a complaint, or
- (b) an opinion on the resolution of a question in dispute.

An ADRC must, within 6 months of its establishment, give an opinion on the resolution of a question in dispute.

Where the Advisory Commission or ADRC considers that the question in dispute is such that it warrants more than 6 months, the period may be extended by a further 3 months. In this case, the Advisory Commission or ADRC will give notice in writing to Revenue, the relevant Competent Authorities, and the affected person of any such extension.

5.5.1 Advisory Commission decision to accept or reject a complaint

The Advisory Commission will notify Revenue and the other competent authorities involved of its decision to accept or reject a complaint within 30 days from the date the decision is made.

The next steps depend on whether the decision of the Advisory Commission is to accept or reject the complaint:

- Where the Advisory Commission decides to accept the complaint and confirms that the requirement of Article 3 (1)-(3) of the Directive are satisfied, then within 60 days from the date of notification of that decision, Revenue or the other competent authorities involved must –
 - (a) initiate a mutual agreement procedure to resolve the question in dispute, and
 - (b) where Revenue has made such a request, it will inform the Advisory Commission and the affected person of that request.

The dispute resolution process then moves to the MAP phase ([Phase 2](#)). In such circumstances the MAP will begin on the latest date on which a competent authority involved received the notification of the decision of the Advisory Commission.

- If Revenue or the other competent authorities involved fail to initiate a mutual agreement procedure to resolve the question in dispute, the Advisory Commission will reconvene to deliver an opinion on the resolution of the question in dispute under [Phase 3](#).

- Where the Advisory Commission rejects the complaint all proceedings under the Regulations will cease.

5.5.2 Advisory Commission or ADRC opinion on the resolution of a question in dispute

The Advisory Commission or ADRC will base its opinion on the resolution of the question in dispute on the relevant DTA, the EU Arbitration Convention, the TCA 1997, the Regulations and the law of each relevant Member State in so far as it relates to the question in dispute.

The Advisory Commission or ADRC will adopt its decision on the resolution of the question in dispute by a simple majority of its members. Where this majority opinion cannot be reached, the chair of the Advisory Commission or ADRC will determine the final decision.

The chair of the Advisory Commission or ADRC will notify the competent authorities involved of its opinion on the resolution of a question in dispute in writing and the dispute resolution process moves to [Phase 4](#).

6 Phase 4: Final decision on the resolution of a question in dispute

6.1 When is a decision final under the Regulations?

Within 6 months of the receipt of the opinion of the Advisory Commission or the ADRC, Revenue and the other competent authorities involved must agree on how to resolve the question in dispute. Revenue may, with the competent authority of each Member State, make a decision which deviates from the opinion of the Advisory Commission or the ADRC.

Where Revenue and the other competent authorities involved fail to reach an agreement within the specified 6-month period, the opinion of the Advisory Commission or the ADRC will become binding and the competent authorities must implement that opinion.

Where agreement is reached between Revenue and the other competent authorities within 6 months or where they fail to reach an agreement and the opinion of the Advisory Commission or the ADRC becomes binding, then for the purposes of the Regulations, this represents the “final decision”.

The final decision on the resolution of the question in dispute is binding on Revenue but does not bind Revenue in any other case and will not constitute a precedent.

6.2 Notification of the final decision

Revenue must, without delay but, within 30 days from the date of the agreement on the final decision, notify the affected person in writing of the final decision.

If Revenue fails to notify the affected person of the final decision within the 30 day period⁶, the affected person may apply to the High Court for the purpose of obtaining the final decision.

6.3 Obligation on the affected person

The affected person has 60 days from the date of receipt of the notification of the final decision on the resolution of the question in dispute to –

- (a) accept the final decision, and
- (b) renounce any right to remedy in respect of the question in dispute under Irish law.

The final decision will not be implemented unless the affected person notifies Revenue of their acceptance of the decision within the 60 days as specified above.

6.4 Implementation of the final decision

Once the affected person confirms in writing acceptance of the final decision, Revenue will implement the decision irrespective of any time limits provided for under the TCA 1997.

However, where Revenue and the competent authorities involved could not reach an agreement and the opinion of the Advisory Commission or the ADRC is the final decision, Revenue is not required to implement the final decision if the Court or a judicial body in a relevant Member State decides that there was a lack of independence in the case of any member of the Advisory Commission or the ADRC.

To the extent that the implementation of the final decision involves a claim for a repayment of tax, Revenue will make a repayment of tax for the relevant 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 TCA 1997, would become a valid claim (within the meaning of section 865(1) of TCA 1997).

Where the implementation of the final decision does not involve a claim for a repayment of tax, but does require Revenue to amend an assessment to tax for a chargeable period or chargeable periods, Revenue will 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 Revenue with all information reasonably required for the purposes of amending the assessment for the chargeable period.

In either instance, the affected person should contact its local tax Branch and submit revised tax computations for the affected accounting periods to Revenue. In the event that Revenue fails to implement the final decision within the specified time period the affected person may apply to the High Court for an order requiring Revenue to implement the final decision in accordance with its terms.

⁶ An affected person should expect to receive the final decision at the latest within 7 months (6 months and 30 days) of the receipt of the notification of the opinion of the Advisory Commission or the ADRC.

6.5 Publication of the final decisions

The European Commission implementing Regulation (EU) 2019/652 of 24 April 2019⁷ proposes (in [Annex II](#)) a standard form for the communication of information concerning the publication of the final decision in accordance with the Directive.

Where the affected person consents to the publication of the final decision, Revenue may, subject to the agreement of the other competent authorities involved, publish the final decision in its entirety.

Where the affected person or the other competent authorities involved do not consent to the publication of the final decision in its entirety, Revenue will publish an abstract of the final decision (in line with the European Commission standard form) that will contain the following information:

- (a) a description of the issues and the subject matter,
- (b) the date of publication,
- (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.

Before the abstract of the final decision is published, Revenue must send a copy of the abstract to the affected person and each of the other competent authorities involved must agree to its publication. The affected person may, within 60 days from the date of receipt of the abstract, make a request to Revenue not to publish information in the abstract if that information concerns any trade, business, industrial or professional secret or trade process, or it is contrary to public policy. Revenue must ensure, without delay, that the European Commission is notified in respect of information to be published in the abstract.

7 The list of Independent Persons of Standing

The list of Independent Persons of Standing consists of individuals nominated by the Member States. The Department of Finance will notify the European Commission of the names of the independent persons of standing who have been nominated.

The full list is available on the [European Commission website](#).

7.1 Ministerial nominations to the list

The Minister for Finance nominates 3 individuals for inclusion in the list and provides the European Commission with complete and up-to-date information regarding the

⁷OJ No. L110, 25.4.2019

nominees' professional and academic background, their competence, experience and any conflicts of interests.

Those nominated must be competent and independent. The Minister may, at any time, remove a nominated person from the list. Vacancies on the list may be filled as they occur. Member States are required to notify the Commission of the names of those nominated and of any subsequent changes to the list.

7.2 Objections to persons nominated

The Minister for Finance may object to any independent person of standing where, in the Minister's opinion, that person lacks independence. If such an objection is made the Minister must inform the European Commission and provide the appropriate evidence. The European Commission will in turn inform the Member State involved. That Member State has 6 months to investigate the objection and to decide whether to remove the individual from the list of independent persons of standing. Member States must, without delay, notify the Commission of any action taken in accordance with this paragraph.

8 Rules of Functioning of the Advisory Commission or ADRC

8.1 Agreement on rules of functioning

The rules of functioning are a comprehensive set of rules that cover the framework for the dispute resolution procedure. The rules ensure that the process runs as intended and that the rights of the affected person are protected. It is up to Revenue and the other competent authorities involved to establish and agree the rules of functioning for the Advisory Commission or the ADRC, as the case may be.

The European Commission implementing Regulation (EU) 2019/652 of 24 April 2019⁸ lays down (in [Annex I](#)) a set of standard Rules of Functioning for the Advisory Commission or ADRC.

8.2 Notification of the rules of functioning

After the Rules of Functioning have been agreed, Revenue will notify the affected person in writing of—

- (i) the Rules of Functioning for the Advisory Commission or ADRC,
- (ii) the date by which the opinion on the resolution of the question in dispute will be delivered, and
- (iii) references to the applicable provisions of any enactment and to any applicable double taxation agreements or conventions,

not later than the end of the period of 120 days specified to set up the Advisory Commission.

⁸OJ No. L110, 25.4.2019

Where Revenue fails to provide the Rules of Functioning to the affected person, the independent persons of standing and the chair appointed to the Advisory Commission or ADRC will –

- (i) complete the Rules of Functioning on the basis of the standard Rules of Functioning agreed and published by the European Commission (see [8.1](#)), and
- (ii) ensure they are notified to the affected person not later than 14 days from the date on which the Advisory Commission or ADRC, as the case may be, was set up.

Where the independent persons of standing and the chair of the Advisory Commission or ADRC have not agreed the Rules of Functioning or have not notified them to the affected person, the affected person may apply to the High Court for an order for the implementation of the Rules of Functioning.

9 Costs

9.1 Costs borne by the competent authorities

Revenue and the other competent authorities involved, unless agreed otherwise, will equally share the cost of the fees and expenses of each of the independent persons appointed to an Advisory Commission or ADRC. Under the Directive, the fees are limited to €1,000 per person per day for every day on which the Advisory Commission or ADRC meets.

In certain limited circumstances (see [9.2](#)), all the costs of the Advisory Commission may be borne by the affected person.

9.2 Costs borne by the affected person

The affected person is liable for their costs incurred in relation to any proceedings brought under the Regulations.

In addition, if Revenue and the other competent authorities involved agree, the affected person, will be liable for the full costs of the Advisory Commission or ADRC where –

- (a) the affected person withdraws their complaint, or
- (b) an Advisory Commission, set up at the request of the affected person, decides that the decision of the competent authorities involved to reject the complaint was correct.

10 Confidentiality

Members of the Advisory Committee and / or the ADRC, the affected person and their representatives, are subject to obligations of secrecy and subject to sanctions for any breaches of secrecy.

A member of an Advisory Commission or an ADRC must not disclose or cause to be disclosed any confidential information received by them in their capacity as such a member.

If a member of an Advisory Commission or ADRC discloses confidential information received in their capacity as such a member, they will have committed an offence and are liable for prosecution by Revenue.

The affected person and their representatives must make a formal declaration to Revenue not to disclose any information (including knowledge of documents) which they receive in the course of the proceedings of the Advisory Commission or ADRC, as the case may be. If an affected person or their representatives disclose confidential information received in the course of the proceeding of the Advisory Commission or ADRC they will have committed an offence and are liable for prosecution by Revenue.

A person convicted of an offence for breach of confidentiality is liable (on summary conviction) to a Class A fine or, at the direction of the court, a fine not exceeding €10,000.

11 Frequently Asked Questions

11.1 What is a competent authority of a Member State?

The term ‘competent authority’ refers to the body designated by a Member State to resolve a “question in dispute” in accordance with the Directive. The competent authority must comply with the obligations imposed by the Directive. In Ireland, Revenue conducts this function⁹. The competent authorities involved are the competent authorities that are directly involved in the question in dispute. In general, the competent authority of the relevant Member State will notify the affected person of the action resulting in, or that will result in, the question in dispute in the form of a Notice of Assessment or other form of written notification.

11.2 What taxes are covered by the Regulations?

Disputes arising from a divergence in application or interpretation of double taxation agreements or under the EU Arbitration Convention are covered by the Regulations.

In Ireland, the taxes covered by the Regulations are income tax, Universal Social Charge (USC), corporation tax and capital gains tax. The similar direct taxes imposed by other EU Member States are also covered. Inheritance taxes, gift taxes and indirect taxes (VAT or sales taxes) are excluded.

11.3 What is a question in dispute?

A question in dispute is a dispute—

- (a) arising from, or which may arise from, a divergence in the interpretation or application of double taxation agreements between Ireland and any other Member State or the EU Arbitration Convention, in particular disputes which result in double taxation,
- (b) involving income or capital earned in a tax year commencing on or after 1 January 2018, and
- (c) notified to each relevant competent authority involved on or after 1 July 2019.

Revenue and the competent authorities of the other relevant Member States may agree to apply the Regulations to a complaint submitted before 1 July 2019, or a complaint involving income or capital earned in a tax year commencing before 1 January 2019.

⁹ Please refer to Appendix 1 of Revenue Tax and Duty Manual [Part 35-02-08](#) for contact details for the competent authority within Revenue.

11.4 What is the interaction between the dispute resolution process in the Regulations and the MAP article of a DTA?

Affected persons may also seek to resolve disputes under the relevant MAP article of the relevant DTA or under the EU Arbitration Convention. Revenue Tax and Duty Manual [Part 35-02-08](#)¹⁰ provides information on the application of the mutual agreement procedure (“MAP”) in Ireland.

The affected person may also be entitled to seek to resolve the same dispute under the Regulations. Note that the submission of a complaint under the Regulations shall put an end to any other ongoing proceedings under a DTA or the EU Arbitration Convention in relation to the same question in dispute.

¹⁰ Revenue Tax and Duty Manual [Part 35-02-08](#)

Appendix I: Contact details when submitting a complaint to Revenue

Complaints on transfer pricing and attribution of profits to a permanent establishment

Complaints that relate to matters of transfer pricing or the attribution of profits to a permanent establishment are dealt with by the Transfer Pricing Branch of the International Tax Division and should be addressed to:

Director, Transfer Pricing Branch
International Tax Division Office of the Revenue Commissioners
Dublin Castle
D02 F342 Dublin 2,
Ireland

Tel: +353 1 858 9377 or +353 1 858 9712 Fax: + 353 1 679 3314

Email: transferpricing@revenue.ie

Non-transfer pricing complaints

Non-transfer pricing complaints are dealt with by the Tax Treaties Branch of the International Tax Division and should be addressed to:

Director, Tax Treaties Branch International Tax Division
Office of the Revenue Commissioners
Dublin Castle
D02 HW86 Dublin 2,
Ireland

Tel: +353 1 858 9885 or +353 1 858 9884

Email: taxtreaties@revenue.ie

Appendix II: Information and documentation required to be submitted in or with a complaint

Information and documentation submitted with a complaint should be prepared in one of the official languages of Ireland (Irish or English) and submitted electronically using Revenue's MyEnquiries¹¹ facility or the secure Revenue File Transfer Service¹² (RFTS). Two hard copies of the submission should also be provided.

Where applicable, taxpayers should ensure that a statement authorising a person (e.g. an agent) to make a complaint on their behalf is provided.

The information to be supplied in or with the complaint is as follows¹³:

1. 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;
2. the tax year or tax years to which the complaint relates;
3. details of the following, including a copy of any supporting documents:
 - (a) the relevant facts and circumstances of the case, including, in particular –
 - (i) details of the structure of the transaction related to the question in dispute 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 Revenue or the tax administration of a relevant Member State, where applicable;
 - (b) the nature and date of the actions giving rise to the question in dispute, including, where applicable –

¹¹ [MyEnquiries](#) is a structured online contact facility that allows customers to securely send and receive correspondence to and from Revenue instead of using email.

¹² Taxpayers wishing to use the RFTS can contact Revenue (see Appendix 1 for contact details) to obtain further information on using this system.

¹³ Please refer to Revenue Tax and Duty Manual [Part 35-02-08](#), for further details regarding the submission of a MAP request to Revenue, including the manner in which the relevant information should be submitted.

-
- (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 that income or that gain in the other Member State, and
 - (iii) the related amounts in the currencies of the Member States concerned;
 4. Reference to the applicable national rules and to the DTA and/or EU Arbitration Convention, 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;
 5. The following, together with copies of any supporting documents:
 - (a) an explanation of why the affected person considers that there is a question in dispute;
 - (b) 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;
 - (c) 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 Revenue;
 - (d) 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 Revenue and the tax authorities of the relevant Member States with regard to the question in dispute, where relevant;
 - (e) information on any complaint submitted by the affected person under another MAP 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;

6. Any specific additional information requested by Revenue, or the competent authority of a relevant Member State, that is considered necessary for them to undertake the substantive consideration of the particular case¹⁴.
7. The identification of the other competent authorities in each relevant Member State to whom the complaint also concerns.
8. A statement confirming that the complaint and all of the information listed above are being simultaneously submitted to all relevant competent authorities. Please also identify the name and designation of the person or office of each competent authority to which the complaint is being submitted.

This statement is not required if the affected person qualifies for the special provisions for individuals and smaller companies (see 3.3). If these provisions apply, then affected persons are requested to state this in their submissions.

¹⁴ Please refer to Appendix 2 of Revenue Tax and Duty Manual [Part 35-02-08](#), for further details on the information required as part of a MAP request.

Appendix III: Glossary of terms

Term	Definition
ADRC	Alternative Dispute Resolution Commission
Affected person	An individual or company who is resident of a Member State for tax purposes for the tax year and whose taxation is directly affected by the question in dispute.
Competent authorities involved	The competent authorities of the EU Member State(s) involved in the dispute.
Double Taxation	Double Taxation means the imposition by two or more Member States in respect of the same taxable income or capital when it gives rise to either (i) an additional tax charge; (ii) an increase in tax liabilities; or (iii) the cancellation or reduction of losses that could be used to offset taxable profits;
DTA	Double Taxation Agreement
'Notification of the action resulting in, or that will result in, a question in dispute'	In the State, this will usually take the form of a 'Notice of Assessment' or a 'letter of determination' issued from Revenue. Notices of assessment issue following an assessment to tax made in accordance with the relevant provisions of the Taxes Consolidation Act of 1997.
Question in dispute	The matter giving rise to a dispute between Revenue and a competent authority of at least one other Member State arising from the interpretation and application of a DTA or the EU Arbitration Convention, in particular disputes that result in double taxation.

Revenue

The Revenue Commissioners are the competent authority in the State and for the purposes of this manual are referred to as 'Revenue'.

TAC

Tax Appeals Commission

Appendix IV: MAP process under the Regulations

It is envisaged that, in most cases, mutual agreement will be reached at the MAP stage of the process. The diagram below summarises how the mutual agreement process operates under the Regulations.

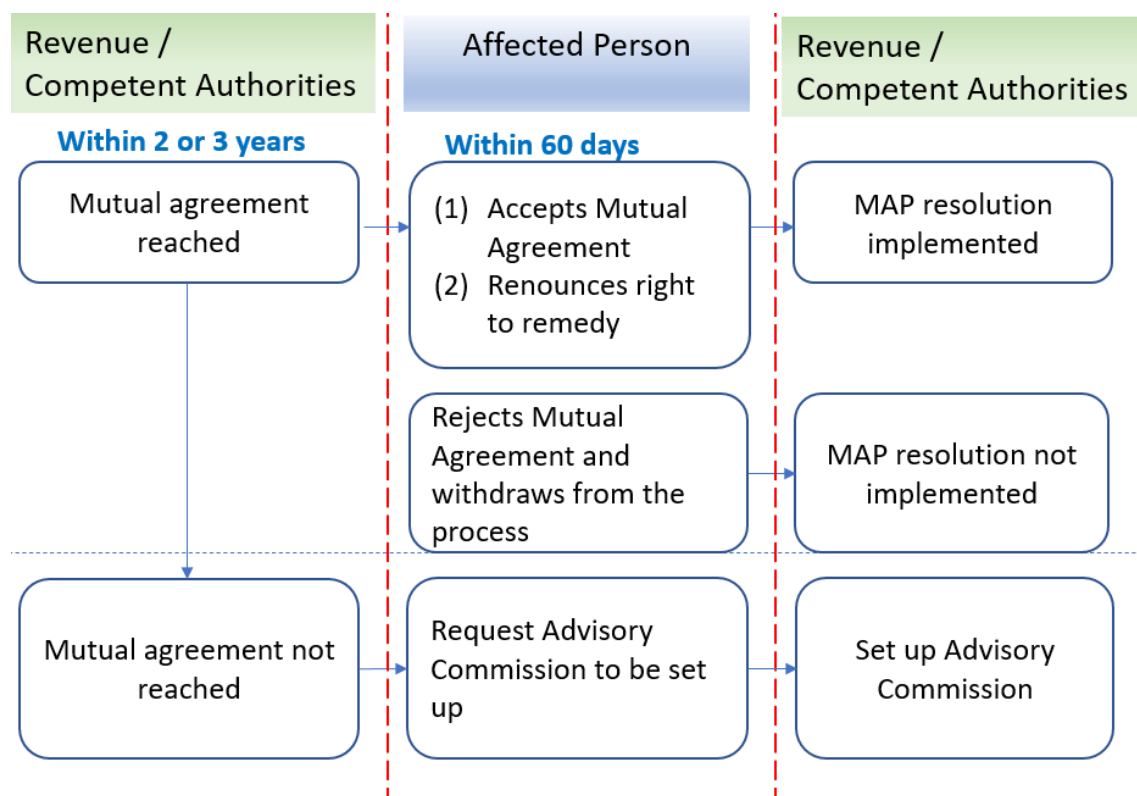


Figure 2: Diagram summarises how the mutual agreement process operates under the Regulation

Appendix V: Examples of complaints about a “question in dispute”

The following examples illustrate the types of disputes that may arise between Member States and whether the disputes qualify to be dealt with under these Regulations.

Example 1 (an individual)

A national of Member State A residing in Ireland earns income from an Irish employer. The individual returns to Member State A and continues to work for the Irish employer, spending most of their time carrying out their duties of employment in Member State A and returning to Ireland only sporadically. Both Ireland and Member State A tax the employment income under their respective domestic legislation with the result that the individual is subject to double taxation.

The individual is an affected person and can submit a complaint to the competent authority of Member State A to seek to resolve the tax dispute. The competent authority of Member State A will forward a copy of the complaint to Revenue. Provided the complaint meets the criteria (see [3.6](#)), both competent authorities will accept the complaint and undertake to resolve the dispute on a unilateral basis or by mutual agreement procedure.

Example 2 (a company)

A company resident in Ireland sells goods through a company in Member State A. Member State A competent authority carried out an assessment and determined that the Irish resident company is operating a permanent establishment in that jurisdiction on the basis of the nature and extent of the activities carried on there, and the existence of a fixed base from which such activities are carried out. The company disputes this assertion and simultaneously submits its complaint to Revenue and to the competent authority of Member State A.

Where the complaint meets the criteria (see [3.6](#)), both competent authorities will accept the complaint and undertake to endeavour to resolve the dispute on a unilateral basis or by mutual agreement procedure.

Example 3

An Irish resident company, whose parent company is resident in Member State A, is in receipt of payments from a company resident in Member State B in respect of certain software. The payments are correctly classified as royalties and taxed in accordance with the Royalties Article of the relevant DTA. The issue in dispute concerns whether the Irish company is the ‘beneficial owner’ of the royalty payments and therefore entitled to avail of the lower withholding tax in the DTA. The company simultaneously submits its complaint to Revenue and to the competent authorities of Member State A and Member State B.

Revenue reviews the papers submitted and rejects the complaint on the basis that the complaint was not submitted within the specified three year period (see [3.2](#)). The competent authorities of Member States A and B form a different view and accepts the complaint.

The company can make a request to all competent authorities to set up of an Advisory Commission for the purpose of giving a decision on whether to accept or reject the complaint (see [5.1](#)) and the process moves to Phase 3.

Example 4

An Irish resident individual sought assistance under the Regulations in respect of an inheritance received from a deceased individual who was tax resident in Member State A.

The Regulations apply to income earned or capital gained and does not cover inheritance taxes. The individual is not regarded as an affected person under the Regulations. Therefore, the complaint is rejected by both competent authorities and procedures under the Regulations are terminated.

Appendix VI: Unofficial Consolidated Regulations

Appendix VI contains an **unofficial** consolidation of the European Union (Tax Dispute Resolution Mechanisms) Regulations 2019 (S.I. No. 306 of 2019), and the European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (S.I. No. 673 of 2020) for illustrative purposes only. This is not a legal document.

EUROPEAN UNION (TAX DISPUTE RESOLUTION MECHANISMS) REGULATIONS 2019, as amended

Contents

PART 1

PRELIMINARY MATTERS

1. Citation
2. Commencement
3. Interpretation
4. Application of Regulations
5. Scope of Regulations
6. Competent authority, compliance and delegation
7. Form and manner of delivery of information

PART 2

RESOLUTION OF TAX DISPUTES

8. Provisions relating to submission of complaint
9. Mutual agreement procedure

10. Decision by competent authorities to reject complaint

PART 3

DISPUTE RESOLUTION BY THE ADVISORY COMMISSION

11. Request for dispute resolution by Advisory Commission
12. Appointments by order of Court
13. Membership of Advisory Commission
14. List of independent persons of standing
15. Alternative Dispute Resolution Commission
16. Rules of Functioning – notification obligations
17. Costs of proceedings
18. Information, evidence and hearings
19. Final decision

PART 4

SUPPLEMENTARY AND FINAL PROVISIONS

20. Interaction with national law
21. Individuals and small companies
22. Publication of final decision

SCHEDULE

INFORMATION TO BE CONTAINED IN A COMPLAINT

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’ means -
 - (a) where it is set up by the Commissioners, an Advisory Commission set up pursuant to a request under Regulation 11(1)(a) or (b), as the case may be, and
 - (b) where it is set up by the competent authority of a relevant Member State, an Advisory Commission set up in accordance with Articles 6 and 8 of the Directive;]¹⁵
“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;

¹⁵ Substitution by European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (S.I. No. 673 of 2020) Regulation 3(a) and deemed to have come into operation on 1 July 2019.

“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;

“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 2017¹⁶ 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);

¹⁶ OJ No. L265, 14.10.2017, p. 1

“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).¹⁷

(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

¹⁷ OJ No. L225, 20.8.1990, p.10

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) and, where applicable, paragraph (2)(d),]¹⁸

¹⁸ Substitution by European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (S.I. No. 673 of 2020) Regulation 3(b) and deemed to have come into operation on 1 July 2019.

- (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, subject to Regulation 21, to the competent authority of each relevant Member State for the setting up of an Advisory Commission, for the purposes of Article 6 of the Directive, where -]¹⁹
 - (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 -

¹⁹ Substitution by European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (S.I. No. 673 of 2020) Regulation 3(c) and deemed to have come into operation on 1 July 2019

- (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 Commissioners receive a request under paragraph (1)(a) or (b), as the case may be, they shall endeavour to set up an Advisory Commission not later than 120 days from the date of receipt by them of the request and the chair of the Advisory Commission shall, as soon as practicable, inform the affected person that it is set up.

- (5) The Advisory Commission shall be composed of –
- (a) one chair,
 - (b) one representative of the Commissioners and one representative of the competent authority of each relevant Member State or, if the Commissioners and each such other competent authority agree, 2 representatives of each of them, and
 - (c) one independent person of standing, appointed by the Commissioners from the list and one independent person of standing appointed by the competent authority of each relevant Member State from the list or, if the Commissioners and each such other competent authority agree, 2 independent persons of standing appointed by each of them from the list.
- (6) An Advisory Commission set up pursuant to a request under paragraph (1)(a) shall -
- (a) adopt a decision on the acceptance of the complaint not later than 6 months from the date on which it is set up, and
 - (b) notify the Commissioners and the competent authority of each relevant Member State of its decision not later than 30 days from the date of the decision referred to in subparagraph (a).
- (7) Where -
- (a) the Advisory Commission -
 - (i) adopts a decision to accept a complaint, and
 - (ii) has confirmed that the requirements of Article 3 of the Directive have been satisfied,and
 - (b) a request to initiate a mutual agreement procedure has been made by the Commissioners or the competent authority of a relevant Member State, as the case may be, to resolve the question in dispute,
- the Commissioners shall endeavour to resolve the question in dispute by the mutual agreement procedure in accordance with Regulation 9, and 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.
- (8) Where the Commissioners make a request referred to in paragraph (7)(b), they shall notify, in writing, the Advisory Commission, the competent

authority of each relevant Member State and the affected person of the request.

- (9) Where a request referred to in paragraph (7)(b) is not made within the period of 60 days from the date of the notification of the decision of the Advisory Commission to accept the complaint, the Advisory Commission shall deliver an opinion under Article 14(1) of the Directive, in writing, on the resolution of the question in dispute not later than 6 months from the date of expiry of that period of 60 days.
- (10) An Advisory Commission set up pursuant to a request under paragraph (1)(b) shall deliver its opinion under Article 14(1) of the Directive, in writing, on the resolution of the question in dispute to the Commissioners and the competent authority of each relevant Member State not later than 6 months from the date on which it is set up.
- (11) (a) Where the Advisory Commission considers that the question in dispute is such that it would need more than the period of 6 months specified in paragraph (9) or (10), as the case may be, to deliver an opinion, that period may be extended by 3 months.
- (b) The Advisory Commission shall give notice in writing to the Commissioners, the competent authority of each relevant Member State and the affected person of any extension under subparagraph (a) of the period within which the Advisory Commission shall deliver an opinion.
- (12) The Advisory Commission shall base its opinion on the resolution of the question in dispute on -
- (a) the arrangement, the Act of 1997, these Regulations and any other enactment related to the question in dispute, and
- (b) the law of each relevant Member State in so far as it relates to the question in dispute.
- (13) (a) The Advisory Commission shall adopt its opinion on the resolution of the question in dispute by a simple majority of its members.
- (b) Where a majority opinion of its members cannot be reached, the vote of the chair of the Advisory Commission shall determine the final opinion.

- (c) The chair of the Advisory Commission shall notify in writing the Commissioners and the competent authority of each relevant Member State of the opinion.]²⁰

Appointments by order of Court

12. (1) Where an Advisory Commission is not set up within the period specified in [Regulation 11(4)]²¹, 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 specified in Regulation 11(4)]²².
- (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.
- [(6) An affected person shall submit a copy of the application made under paragraph (2) or (3), as the case may be -
- (a) if there is more than one affected person involved in the proceedings, to the competent authority of the Member State in which the affected person is resident for tax purposes, or

²⁰ Substitution by European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (S.I. No. 673 of 2020) Regulation 3(c) and deemed to have come into operation on 1 July 2019

²¹ Substitution by European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (S.I. No. 673 of 2020) Regulation 3(d)(i) and deemed to have come into operation on 1 July 2019

²² Substitution by European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (S.I. No. 673 of 2020) Regulation 3(d)(ii) and deemed to have come into operation on 1 July 2019

- (b) if there is only one affected person involved in the proceedings, to the competent authority of the Member State which failed to appoint at least one independent person of standing and a substitute.
- (7)
- (a) Where a Court has made a decision on an application made under paragraph (1), (2) or (3), as the case may be, it shall ensure that the affected person and the Commissioners are notified of it.
 - (b) The Commissioners shall notify the competent authority of each relevant Member State of the decision referred to in subparagraph (a) as soon as practicable.
- (8) When, for the purpose of Regulation 11(5), a sufficient number of independent persons of standing have been appointed to an Advisory Commission pursuant to an application made under paragraph (3), those independent persons of standing shall appoint the chair of the Advisory Commission by drawing lots from the list according to Articles 7(1) and 8(3) of the Directive.²³

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

²³ Inserted by European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (S.I. No. 673 of 2020) Regulation 3(d)(iii) and deemed to have come into operation on 1 July 2019

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 [under Regulation 12]²⁴ 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 [under Regulation 12]²⁵ or, in the case of a

²⁴ Inserted by European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (S.I. No. 673 of 2020) Regulation 3(e)(i) and deemed to have come into operation on 1 July 2019

²⁵ Inserted by European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (S.I. No. 673 of 2020) Regulation 3(e)(ii) and deemed to have come into operation on 1 July 2019

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.
- [(7) (a) The representatives of the Commissioners and of the competent authority of each relevant Member State on the Advisory Commission and the independent persons of standing appointed to the Advisory Commission shall elect a chair to the Advisory Commission.
- (b) The chair shall -
- (i) be elected from the list, and
 - (ii) be a judge, unless the representatives of the Commissioners and of the competent authority of each relevant Member State and the independent persons of standing agree otherwise.]²⁶

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,

²⁶ Inserted by European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (S.I. No. 673 of 2020) Regulation 3(e)(iii) and deemed to have come into operation on 1 July 2019

- (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.
- [(5) An ADRC shall deliver an opinion, in writing, on the resolution of the question in dispute not later than 6 months from the date on which it is set up.

- (6) (a) Where the ADRC considers that the question in dispute is such that it would need more than the period of 6 months specified in paragraph (5) to deliver an opinion, that period may be extended by 3 months.
- (b) The ADRC shall give notice in writing to the Commissioners, the competent authority of each relevant Member State and the affected person of any extension under subparagraph (a) of the period within which the ADRC shall deliver an opinion.
- (7) The ADRC shall base its opinion on the resolution of the question in dispute on -
- (a) the arrangement, the Act of 1997, these Regulations and any other enactment related to the question in dispute, and
- (b) the law of each relevant Member State in so far as it relates to the question in dispute.
- (8) (a) The ADRC shall adopt its opinion on the resolution of the question in dispute by a simple majority of its members.
- (b) Where a majority opinion of its members cannot be reached, the vote of the chair of the ADRC shall determine the final opinion.
- (c) The chair of the ADRC shall notify in writing the Commissioners and the competent authority of each relevant Member State of the opinion.²⁷

Rules of Functioning - notification obligations

16. [(1) (a) 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 and shall sign the Rules of Functioning so agreed.
- (b) The Rules of Functioning shall -
- (i) in the case of an Advisory Commission set up pursuant to a request under Regulation 11(1)(a) for the purpose of delivering an opinion on the decision to reject a complaint include the information referred to in points (a), (d), (e) and (f) of Article 11(2) of the Directive, and

²⁷ Inserted by European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (S.I. No. 673 of 2020) Regulation 3(f) and deemed to have come into operation on 1 July 2019

- (ii) in the case of an Advisory Commission or ADRC, as the case may be, set up for the purpose of delivering an opinion on the resolution of the question in dispute, include the information referred to in points (a) to (g) of Article 11(2) of the Directive.
- (2) The Commissioners shall, not later than the end of the period of 120 days specified in Regulation 11(4), give notice in writing to the affected person of -
 - (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, and
 - (c) references to the applicable provisions of any enactment and to any applicable arrangements.
- (3)
 - (a) In this paragraph ‘the standard Rules of Functioning’ means the standard Rules of Functioning set out in Annex 1 of Commission implementing regulation (EU) 2019/652 of 24 April 2019²⁸ 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 the Directive.
 - (b) Where notice of the Rules of Functioning has not been given to the affected person in accordance with paragraph (2)(a), the independent persons of standing and the chair shall -
 - (i) complete the Rules of Functioning on the basis of the standard Rules of Functioning, and
 - (ii) ensure they are notified to the affected person not later than 14 days from the date on which the Advisory Commission or ADRC, as the case may be, was set up.
- (4) Where the independent persons of standing and the chair of the Advisory Commission or ADRC, as the case may be, have not agreed the Rules of Functioning or have not 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,²⁹.

²⁸ OJ N. L110, 25.4.2019, p. 26

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.]³⁰
- (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 -

²⁹ Substitution by European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (S.I. No. 673 of 2020) Regulation 3(g) and deemed to have come into operation on 1 July 2019

³⁰ Substitution by European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (S.I. No. 673 of 2020) Regulation 3(h) and deemed to have come into operation on 1 July 2019

- (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)(d), 8(4)(b)(ii),]³¹ 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.

³¹ Substitution by European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (S.I. No. 673 of 2020) Regulation 3(i) and deemed to have come into operation on 1 July 2019

- (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 2019³² 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.

³² OJ No. L110, 25.4.2019, p.26

- (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.

For illustrative purposes only

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.