

EXPLANATORY MEMORANDUM TO
THE DOUBLE TAXATION DISPUTE RESOLUTION (EU) (REVOCATION) (EU
EXIT) REGULATIONS 2020

2020 No. 1383

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument revokes the Double Taxation Dispute Resolution (EU) Regulations (SI 2020/51) (the Existing Regulations) following the end of the transition period. The Existing Regulations provide a mechanism for resolving tax disputes between the United Kingdom and member states of the European Union.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Existing Regulations were introduced for the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolutions in the European Union (the Directive). These regulations revoke the Existing Regulations at the end of the transition period.

7. Policy background

What is being done and why?

- 7.1 The Existing Regulations provide for a mechanism to resolve tax disputes between the United Kingdom and member states of the European Union which arise from the interpretation and application of tax agreements and conventions between the United Kingdom and member states of the European Union that provide for the elimination of double taxation on income and on capital (where applicable). The Existing Regulations also set out the rights and obligations of taxpayers seeking to invoke this mechanism.
- 7.2 The scope of the Directive is limited to member states of the European Union. The United Kingdom is no longer a member state of the European Union and will cease to be within scope of the Directive following the end of the transition period. The Existing Regulations will therefore become inoperable after the end of the implementation period.
- 7.3 The United Kingdom will not consider any new requests for access to this mechanism submitted to the United Kingdom or a member state of the European Union after the end of the transition period. The United Kingdom will continue working cases to a conclusion where the requests were received before the end of the transition period.
- 7.4 Double taxation occurs when two countries tax the same income. For example, an individual who builds up a pension pot while resident in country A may then retire to country B and begin drawing their pension. Country A may tax the pension income on the basis that the pension was earned in that country and country B may tax the pension income in that country on the basis that the individual is a resident of country B when drawing the pension. The individual is then subject to double taxation on the same income.
- 7.5 The United Kingdom has a comprehensive network of bilateral tax treaties with all member states of the European Union and these treaties all include provisions for resolving tax disputes between the United Kingdom and the treaty partners which will remain available to taxpayers to make use of following the end of the transition period.
- 7.6 To date, HMRC has not received any requests to invoke the Existing Regulations since they came into force on 14 February 2020. Together with the fact that a bilateral treaty tax dispute mechanism is available to taxpayers in the United Kingdom, HMRC expects the revocation of the Existing Regulations will have minimal impact.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it revokes legislation which will be inoperable following the end of the transition period.

9. Consolidation

- 9.1 No consolidation will occur as a result of this measure.

10. Consultation outcome

- 10.1 No consultation was carried out for this instrument.
- 10.2 Following the end of the transition period, the United Kingdom will no longer be in scope of the Directive. As a result, the only option is to withdraw from the tax dispute mechanism provided for in the Existing Regulations. Given that there are no substantial alternative courses of action open to the United Kingdom, a consultation would not have a material impact on policy thinking in this instance.

11. Guidance

- 11.1 HMRC's existing guidance ([INTM423000 - International Manual - HMRC internal manual - GOV.UK](#)) regarding tax dispute resolution mechanisms will be updated to reflect the withdrawal of this mechanism.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.
- 12.4 As explained at paragraph 7.6 above, no taxpayer has asked HMRC to invoke the Existing Regulations and taxpayers will continue to have access to tax dispute resolution through the United Kingdom's bilateral tax treaties with member states of the European Union.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small business was that these taxpayers will continue to have access to tax dispute resolution through the United Kingdom's bilateral tax treaties with member states of the European Union.

14. Monitoring & review

- 14.1 This instrument will be subject to review only in relation to any further developments in respect of tax dispute mechanisms with tax treaty partners.
- 14.2 The regulation does not include a statutory review clause because the legislation relates to taxes, duties, levies or other charges and falls within the exemption in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Martin O'Rourke at HMRC Telephone: 03000 515912 or email: martin.orourke@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Andrew Page, Deputy Director for Business Assets and International, Transfer Pricing, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.