

## TRANSPOSITION NOTE

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

The Double Taxation Dispute Resolution (EU) Regulations 2020 (“the Regulations”) provide for the implementation of the Directive into UK law.

There are only two regulations which do not appear in the transposition table. Namely, regulations 1 (which is for domestic citation and commencement) and 38 (which is for the appointment of persons to represent the Commissioners on an Advisory Commission to meet the requirements, in Article 8 of the Directive, for the composition of such a Commission).

Notwithstanding that the Regulations are structured differently to the Directive to aid accessibility, in general a copy out approach has been adopted in relation to particular provisions where that is appropriate to meet domestic requirements.

| Article | Summary of Objective  | Implementation   |
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| 1       | <p><b>Subject matter and scope.</b><br/>This Article sets out the broad aims of the Directive and defines a question in dispute.</p>  | <p>While no transposition is necessary, the subject matter and scope is covered by the Regulations.<br/><b>Regulation 4</b> defines the question in dispute.</p> |
| 2       | <p><b>Definitions</b><br/>This Article defines four terms used in the Directive and sets out the approach in respect of terms not specifically defined.</p>   | <p><b>Regulations 3, 5 and 36</b><br/>The Regulations do not set out a general approach to undefined terms because all key terms are defined.</p>                |
| 3       | <p><b>Complaint</b><br/>This Article covers practical aspects of submitting complaints to competent authorities of Member States concerned including the information which is required, the language to be used and requests for further information.</p> <p>It goes on to deal with acknowledgement of receipt of the complaint; sets out certain time limits; requires the competent authorities to reach a decision on whether or not to accept or reject the complaint; and allows the competent authorities to resolve the complaint unilaterally.</p> | <p><b>Regulations 6, 7, 8, 12, 21</b></p> <p><b>Regulations 11, 13, 18, 19</b></p>   |

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|          | Finally it covers the consequences of withdrawing a complaint (or the complaint ceasing to exist).  | <b>Regulation 17</b>  |
| <b>4</b> | <p><b>Mutual agreement procedure (MAP)</b><br/>This Article sets out aspects of the bilateral phase of the MAP during which the competent authorities have 2 years to reach a bilateral solution (which may be extended to 3 years).</p> <p>It sets out how a bilateral solution should be notified to the affected person and what is required of all parties with respect to implementing the solution.</p> <p>In the event that a solution is not reached, the Member States are required to notify the affected person and provide general reasoning for the failure.</p> | <p><b>Regulations 20 and 23</b></p> <p><b>Regulation 26</b></p> <p><b>Regulation 27</b></p> |
| <b>5</b> | <p><b>Competent authority decision concerning the complaint</b><br/>This Article details grounds for the competent authorities to reject a complaint. It also provides that if one of them fails to take a decision within the time allowed that competent authority should be deemed to have accepted the complaint.</p> <p>It also sets out requirements for appeal rights for affected persons when all Member States reject a complaint.</p>  | <p><b>Regulation 13</b></p> <p><b>Regulation 14</b></p>                                     |
| <b>6</b> | <p><b>Dispute resolution by the Advisory Commission</b><br/>This Article is for allowing complainants to request an Advisory Commission to be set up where (1) the complaint was rejected by at least one, but not all competent authorities concerned, or (2) where they failed to reach an agreed resolution of the question in dispute within the time allowed; and is for Advisory Commission Opinions about those things.</p> <p>It also makes provision for a MAP procedure following an Advisory Commission opinion on a decision to reject a complaint.</p>           | <p><b>Regulations 15, 16, 28, 32</b></p> <p><b>Regulation 22</b></p>                        |

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| <b>7</b>  | <p><b>Appointments by competent courts or national appointing body</b><br/> This Article applies to situations where the affected person has requested the setting up of an Advisory Commission but a Member State has failed to appoint a person of independent standing to serve on that Advisory Commission. The competent court of that Member state is to have the power to make the appointment.</p>   | <b>Regulation 45</b>   |
| <b>8</b>  | <p><b>The Advisory Commission</b><br/> This Article sets out what the composition of the Advisory Commission should be.</p> <p>It has details about the rules for the appointment of independent persons of standing and their substitutes to an Advisory Commission; objections to such appointments; requests for disclosure of interests etc. which might affect their impartiality or appearance of bias; and has requirements about potential bias.</p> <p>It makes provision about the election of a chair of the Advisory Commission.</p> | <p><b>Regulation 37</b></p> <p><b>Regulations 41, 42, 43</b></p> <p><b>Regulation 44</b></p> |
| <b>9</b>  | <p><b>The list of independent persons of standing</b><br/> This Article includes provision for Member States to nominate at least 3 individuals as members of the list of independent persons of standing and provide the Commission of the European Union with certain details about them; has requirements about notification of changes to the list; requires Member State provision about removing appointees from the list; and deals with objections to persons being on the list due to a lack of independence.</p>                       | <b>Regulations 39 and 40</b>   |
| <b>10</b> | <p><b>The Alternative Dispute Resolution Commission</b><br/> This Article is for competent authorities to set up an Alternative Dispute</p>  | <b>Regulations 33, 54 and 55</b>   |

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|           | Resolution Commission instead of an Advisory Commission. Except for rules about the independence of its members, the Alternative Dispute Resolution Commission can have a different form and composition.   |   |
| <b>11</b> | <p><b>Rules of Functioning</b><br/> This Article makes provision about the rules of functioning to be agreed by the competent authorities, and for standard rules of functioning established by the Commission to apply where the rules of functioning are incomplete or were not notified to the affected person. If the standard rules apply then the independent persons of standing and the chair will be obliged to agree the rules and notify the affected person of them. In the event that the independent persons of standing and chair fail to do this, the affected person should be able to apply to a competent court.</p> | <b>Regulation 46, 47</b>                                |
| <b>12</b> | <p><b>Costs of proceedings</b><br/> This Article sets out how the fees of the independent persons of standing should be calculated, and provides that costs incurred by the affected person will not be borne by the Member States. It permits competent authority discretion, by agreement, to charge an affected person for the costs of the independent persons of standing and the chair if the affected person withdraws the complaint or where an Advisory Commission decides that the Member States were correct to reject a complaint.</p>  | <b>Regulations 52, 53</b>                               |
| <b>13</b> | <p><b>Information, evidence and hearings</b><br/> This Article sets out requirements regarding submission of evidence to the Advisory Commission and requests for further evidence made by it.</p> <p>It allows for persons to make requests to appear before the Advisory Commission, subject to the consent of the Member States.</p> <p>Members of the Advisory Commission are to be bound by obligations of secrecy in relation to information received in their capacity as members.</p>   | <p><b>Regulation 48</b></p> <p><b>Regulation 51</b></p> |

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|           | Affected persons are to be required to sign a non-disclosure declaration, and there must be sanctions for disclosure of secret information.  | <b>Regulations 49, 50</b>                     |
| <b>14</b> | <b>The opinion of the Advisory Commission or Alternative Dispute Resolution Commission</b><br>This Article sets out the required time limits for the Advisory Commission to deliver its opinion, the basis of the opinion and certain rules about the decision-making.   | <b>Regulation 32</b>                          |
| <b>15</b> | <b>Final decision</b><br>This Article is about the final decision of competent authorities and details time limits and notification requirements.  | <b>Regulation 34</b>                          |
| <b>16</b> | <b>Interaction with national proceedings and derogations</b><br>This Article allows for certain derogations and deals with particular interactions with national provisions including: termination of procedures due to certain court decisions; suspension of procedures due to judicial or administrative proceedings; initiation of certain domestic proceedings dealing with the same subject matter as the question in dispute; derogations in the case of fraud etc penalty cases; discretion to refuse to set up an Advisory Commission in cases not involving double taxation; and provisions about the effect of complaints under the Directive, particularly the termination of other proceedings, involving the same question in dispute, under double taxation Treaties and Conventions. | <b>Regulations 10, 20, 24, 25, 29, 30, 31</b> |
| <b>17</b> | <b>Special provisions for individuals and smaller undertakings</b><br>This Article requires arrangements for Individuals and SMEs to minimise their administrative burden in connection with pursuing a complaint. The general aim is to allow such persons to communicate primarily with the competent authority of the Member State in which they are resident.  | <b>Regulations 9, 12, 17, 21, 26, 28</b>      |

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| <b>18</b> | <p><b>Publicity</b><br/>This Article makes provision requiring the Advisory Commission to issue its decision in writing. It also makes certain provision about the final decision of the competent authorities including detailed rules about publication of it or an abstract of it.</p>  | <b>Regulation 32, 34</b>   |
| <b>19</b> | <p><b>Role of the Commission and administrative support</b><br/>This Article requires the EU Commission to maintain a list of competent authorities of the Member States and of independent persons of standing. It is also required to maintain a repository of published decisions under Article 18.</p> <p>Member States are required to notify the Commission of measures taken to comply with the secrecy requirements of Article 13.</p> | <p><b>No transposition is necessary</b></p> <p><b>No transposition is necessary.</b><br/>(The UK's measures are set out in regulations 49 and 50.)</p> |
| <b>20</b> | <p><b>Committee procedure</b><br/>This Article enables the EU Commission to set up a committee to assist with its duties and obligations.</p>  | <b>No transposition is necessary.</b>  |
| <b>21</b> | <p><b>Review</b><br/>This Article requires the EU Commission to evaluate the Directive and report to the EU Council by 30 June 2024.</p>   | <b>No transposition is necessary.</b>  |
| <b>22</b> | <p><b>Transposition</b><br/>This Article requires Member States to implement the Directive into domestic legislation by 30 June 2019 and include a reference to the Directive in their legislation. Member States are required to provide the EU Commission with a copy of the legislation.</p>  | <b>No transposition is necessary.</b>  |
| <b>23</b> | <p><b>Entry into force</b><br/>This Article states that the Directive applies to questions in dispute in respect of a tax year commencing on or after 1 January 2018</p>   | <b>Regulation 2</b>  |
| <b>24</b> | <p><b>Addressees</b><br/>This Article states that the Directive is addressed to the Member States.</p>   | <b>No transposition is necessary.</b>  |
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