

L.N. 441 of 2020**INCOME TAX ACT
(CAP. 123)****European Union Tax Dispute Resolution Mechanisms Directive
Implementation (Amendment) Regulations, 2020**

IN EXERCISE of the powers conferred by articles 52B and 96 of the Income Tax Act, the Minister for Finance and Financial Services, has made the following regulations:-

Citation and
commencement.

S.L. 123. 191.

1. (1) The title of these regulations is the European Union Tax Dispute Resolution Mechanisms Directive Implementation (Amendment) Regulations, 2020 and these regulations shall be read and construed as one with the European Union Tax Dispute Resolution Mechanisms Directive Implementation Regulations, hereinafter referred to as "the principal regulations".

(2) These regulations shall be deemed to have come into force on the 1st July 2019.

Substitutes
regulation 12 of
the principal
regulations.

2. Regulation 12 of the principal regulations shall be substituted the following new regulation:

"Appointment
s by the
Chairman of
the Board of
Governors of
the Malta
Arbitration
Centre.
Cap. 387.

12. (1) If an Advisory Commission is not set up within the period provided for in sub-regulation (4) of regulation 11, the relevant affected person may apply to the Chairman of the Board of Governors of the Malta Arbitration Centre established in terms of the Arbitration Act to set up the Advisory Commission.

Where the Commissioner has failed to appoint at least one (1) independent person of standing and a substitute, the affected person may request the Chairman of the Board of Governors of the Malta Arbitration Centre to appoint an independent person of standing and a substitute from the list referred to in regulation 14.

If the Commissioner and the competent authorities of all the other Member States concerned have failed to do so, the affected person may request the Chairman of the Board of Governors of the Malta Arbitration Centre and the competent courts of the other Member States concerned or to any other body or person designated in their national laws for the carrying out of such function to appoint the two (2) independent persons of standing from the list referred to in regulation 14. Those independent persons of standing shall appoint the chairperson by drawing lots from the list of independent persons according to sub-regulation (3) of regulation 13.

If more than one affected person is involved in the proceedings, referrals to appoint the independent persons of standing and their substitutes shall be submitted to the Chairman of the Board of Governors of the Malta Arbitration Centre by those affected persons who are resident in Malta. If only one affected person is involved, such a referral shall be submitted to the Chairman of the Board of Governors of the Malta Arbitration Centre if the Commissioner has failed to appoint at least one (1) independent person of standing and a substitute.

(2) The appointment of the independent persons and their substitutes under sub-regulations (1) shall be referred to the Chairman of the Board of Governors of the Malta Arbitration Centre only after the end of the one hundred and twenty (120) day period referred to in sub-regulation (4) of regulation 11, and within thirty (30) days after the end of that period.

(3) The Chairman of the Board of Governors of the Malta Arbitration Centre shall adopt a decision under sub-regulation (1) and notify it to the applicant. A request to the Chairman of the Board of Governors of the Malta Arbitration Centre for an appointment of an independent person in terms of this regulation shall be filed with the Registrar of the Malta Arbitration Centre against the payment of such fees as may be provided for in terms of the Arbitration Act.

Cap. 387.

(4) The Chairman of the Board of Governors of the Centre shall proceed to make the appointment and for this purpose he shall have the same powers that are vested in him under the Arbitration Act in cases where he is empowered to appoint arbitrators because the parties to a domestic arbitration have failed to agree in this respect. An appointment made by the Chairman of the Board of Governors of the Malta Arbitration Centre in terms of this regulation shall be final.

The Chairman of the Board of Governors of the Malta Arbitration Centre shall inform the Commissioner, who in turn shall inform the competent authority of the other Member States concerned without delay."

Amends
regulation 13 of
the principal
regulations.

3. In sub-regulation (4) of regulation 13 of the principal regulations, the words "by the national appointing body" shall be substituted by the words "by the Chairman of the Board of Governors of the Malta Arbitration Centre".

Amends
regulation 23 of
the principal
regulations.

4. Regulation 23 of the principal regulations shall be amended as follows:

(a) sub-regulations (1), (2), (3) and (4) thereof shall be renumbered as sub-regulations (2), (3), (5) and (6) respectively;

(b) immediately before sub-regulation (2) thereof as renumbered, there shall be added the following new sub-regulation:

"(1) Advisory Commissions and Alternative Dispute Resolution Commissions shall issue their opinions in writing."; and

(c) immediately after sub-regulation (3) thereof as renumbered, there shall be added the following new sub-regulation:

"(4) For the purpose of communicating the information referred to in sub-regulations (2) and (3), the Commissioner shall use the standard forms referred to in paragraph (4) of article 18 of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union."