L.N. 159 of 2019

INCOME TAX ACT
(CAP. 123)

European Union Tax Dispute Resolution Mechanisms Directive Implementation Regulations, 2019

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

Citation and commencement.

1. (1) The title of these regulations is the European Union Tax Dispute Resolution Mechanisms Directive Implementation Regulations, 2019.

(2) These regulations shall come into force on the 1 July 2019. They shall apply to any complaint submitted on or after 1 July 2019 relating to questions in dispute relating to income or capital earned in or after the year immediately preceding the year of assessment 2019.

Scope.

2. (1) The scope of these regulations is the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.

(2) These regulations lay down rules on a mechanism to resolve disputes between Malta and other Member States when those disputes arise from the interpretation and application of agreements and conventions that provide for the elimination of double taxation of income and, where applicable, capital. It also lays down the rights and obligations of the affected persons when such disputes arise.

Interpretation.

3. (1) In these regulations, unless the context requires otherwise:

"affected person" means any person, including an individual, that is a resident of a Member State for tax purposes, and whose taxation is directly affected by a question in dispute;

"Commission" means the Commission of the European Union;

"Commissioner" means that it also includes his authorised representative;

"competent authority" in respect of Malta means the

Commissioner and in respect of any other Member State it means the authority of that Member State which has been designated as such by that Member State concerned;

"competent court" in respect of Malta means the Civil Court, First Hall and in respect of any other Member State it means the court, tribunal or other body of a Member State which has been designated as such by that Member State concerned;

"double taxation" means the imposition by two or more Member States of taxes covered by an agreement or convention referred to in regulation 2(2) in respect of the same taxable income or capital when it gives rise to either:

(a) the imposition of 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;

"Member State" means a member of the European Union;

"Member State concerned" means a Member State involved in the question in dispute;

"other Member State" means a Member State other than Malta;

"question in dispute" means the matter giving rise to a dispute referred to in regulation 2(2).

(2) Any term not defined in these regulations shall, unless the context requires otherwise, have the meaning that it has at that time under the relevant agreement or convention referred to in regulation 2(2) that applies on the date of receipt of the first notification of the action that resulted in, or that will result in, a question in dispute. In the absence of a definition under such agreement or convention, an undefined term shall have the meaning that it had at that time under the law of the Member State concerned for the purposes of the taxes to which the said agreement or convention applies, any meaning under the applicable tax laws of that Member State prevailing over a meaning given to the term under other laws of that Member State.

Complaint.

4. (1) An affected person shall be entitled to submit a complaint to the Commissioner on a question in dispute requesting the resolution thereof.

(2) An affected person shall have the right to submit a complaint to the Commissioner in accordance with these regulations regardless of whether he has recourse to remedies available under any other provisions of Maltese law or the law of any one (1) of the other Member States concerned.

(3) A complaint shall be submitted to the Commissioner in the Maltese or the English language within three (3) years from the receipt by the affected person of the first notification of the action resulting in, or that will result in, the question in dispute.

(4) The affected person shall indicate in the complaint made to the Commissioner which other Member States are concerned and shall simultaneously submit the complaint with the same information to the competent authority of each of the other Member States concerned.

Information that shall be submitted by the affected person.

5. (1) A complaint shall only be accepted by the Commissioner if, as a first step, the affected person making the complaint provides the Commissioner and the competent authorities of each of the other Member States concerned with the following information:

(a) the name(s), address(es), tax identification number(s) and any other information necessary for identification of the affected person(s) who presented the complaint to the competent authorities and of any other person concerned;

(b) the tax periods concerned;

(c) details of the relevant facts and circumstances of the case (including details of structure of the transaction and of the relationship between the affected person and the other parties to the relevant transactions, as well as any facts determined in good faith in a mutual binding agreement between the affected person and the tax administration, where applicable) and more specifically, the nature and the date of the actions giving rise to the question in dispute (including, where applicable, details of same income received in the other Member State and of inclusion of such income in the taxable income in the other Member State, and details of the tax charged or that will be charged in relation to such income in the other Member State), as well as the related amounts in the currencies of the Member States concerned, with a copy of any supporting documents;

(d) reference to the applicable national rules and to the agreement or convention referred to in regulation 2(2); where more than one (1) agreement or convention is applicable, the

affected person making the complaint shall specify which agreement or convention is being interpreted in relation to the relevant question in dispute. Such agreement or convention shall be the applicable agreement or convention for the purposes of these regulations;

(e) the following information, 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 respond as completely and quickly as possible to all appropriate requests made by a competent authority and to provide any documentation at the request of the competent authorities;

(iv) a copy of the 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 tax authorities 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 under another dispute resolution procedure as defined in regulation 21(5) and an express commitment by the affected person that he will abide by the provisions of regulation 21(5), if applicable;

(f) any specific additional information requested by the competent authorities that is considered necessary to undertake the substantive consideration of the particular case.

(2) The Commissioner may request additional information referred to in paragraph (f) of sub-regulation (1) within three (3) months from the receipt of the complaint. The Commissioner may make further requests for information during the mutual agreement procedure under regulation 10 when he considers this to be necessary, without prejudice to the applicability of the laws of Malta and of the national laws of the other Member States concerned regarding the

protection of information and the protection of trade, business, industrial or professional secret or trade processes.

(3) The affected person shall reply to any request made to him by the Commissioner in accordance with paragraph (f) of sub-regulation (1) within three (3) months from the receipt of the request and shall send a copy of the reply simultaneously to the competent authorities of the other Member States concerned.

Acknowledgment of receipt of the complaint.

6. The Commissioner shall acknowledge receipt of the complaint within two (2) months from the date on which he receives it. He shall also within that period inform the competent authorities of the other Member States concerned of the receipt of the complaint and about the language or languages he intends to use for communications during the relevant proceedings.

Acceptance or rejection of the complaint.

7. (1) The Commissioner shall take a decision on the acceptance or rejection of the complaint within six (6) months of the receipt thereof or within six (6) months of the receipt of the information referred to in regulation 5(1)(f), whichever is later. The Commissioner shall inform the affected person and the competent authorities of the other Member States concerned of his decision without delay.

(2) The Commissioner may decide to reject a complaint within the period provided for in sub-regulation (1) if:

(a) the complaint lacks information required under regulation 5, (including any information requested under regulation 5(1)(f) that was not submitted within the deadline specified in regulation 5(3));

(b) there is no question in dispute; or

(c) the complaint was not submitted within the three (3) year period set out in regulation 4(3).

(3) When informing the affected person of a decision to reject a complaint in accordance with the provisions of sub-regulation (1), the Commissioner shall provide the general reasons for the rejection.

(4) Where the competent authorities of all the Member States concerned have rejected the complaint, the affected person shall have the same right to appeal from the decision of the Commissioner rejecting the complaint as if the Commissioner's decision were an assessment issued under the Income Tax Management Act and as if the Commissioner has refused an objection to an assessment duly filed by the affected person, and the relevant provisions of the Income Tax

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Management Act relating to appeals shall apply *mutatis mutandis*:

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Provided that the time within which an appeal may be made in accordance with article 35(1) of the Income Tax Management Act shall run from the date on which the affected person has been notified of the decision to reject the complaint by the competent authorities of all the Member States concerned.

(5) An affected person who exercises the appeal right referred to in sub-regulation (4) or an appeal right under the national law of any other Member State concerned shall be barred from making a request under regulation 11(1)(a):

(a) while the decision is still under appeal according to the provisions of the national law of any of the Member States concerned;

(b) where the rejection decision can still be further appealed under the appeal procedure of any of the Member States concerned; or

(c) when a rejection decision has been confirmed under the appeal procedure in sub-paragraph (5)(a) but it is not possible to derogate from the decision of the relevant court or other judicial bodies in any one (1) of the Member States concerned.

(6) Where an appeal right referred to in sub-regulation (4) has been exercised, the decision of the relevant court or other judicial body shall be considered for the purposes of regulation 11(1)(a).

(7) Where the Commissioner has not taken a decision on the complaint within the time provided for in sub-regulation (1), the complaint shall be deemed to be accepted by the Commissioner.

Unilateral resolution of dispute.

8. (1) Within the period of six (6) months from the receipt of a complaint, or within six (6) months of the receipt of the information referred to in regulation 5(1)(f), whichever is later, the Commissioner may decide to resolve the question in dispute on a unilateral basis, without involving the competent authorities of the other Member States concerned. In such case, he shall notify the affected person and the competent authorities of the other Member States concerned without delay.

(2) Following a resolution of the question in dispute by the Commissioner or by the competent authority of any of the other Member States concerned, the proceedings under these regulations shall be terminated.

Termination of proceedings when complaint is withdrawn or when question in dispute ceases to exist.

9. (1) An affected person that wishes to withdraw a complaint shall simultaneously submit a written notification of withdrawal to the competent authorities of each one (1) of the Member States concerned. Such notification shall terminate all proceedings under these regulations with immediate effect.

(2) When the Commissioner receives such a notification he shall inform the competent authorities of the other Member States concerned of the termination of proceedings without delay.

(3) If for any reason a question in dispute ceases to exist, all proceedings under these regulations shall terminate with immediate effect and the Commissioner shall inform the affected person of this state of affairs and of the general reasons therefore without delay.

Mutual agreement procedure.

10. (1) (a) Where the Commissioner and the competent authorities of the other Member States concerned accept a complaint, the Commissioner shall seek to resolve the question in dispute by mutual agreement with the competent authorities of the other Member States concerned within two (2) years starting from the last notification of a decision of the competent authority of one (1) of the Member States on the acceptance of the complaint.

(b) The said period of two (2) years may be extended by up to one (1) year at the request of the competent authority of another Member State concerned to the Commissioner:

Provided that such request is received by the competent authorities of all the Member States concerned, and the requesting competent authority provides written justification;

(c) The Commissioner may request an extension referred to in paragraph (b) where he considers that the circumstances of the case make such an extension necessary. In making such a request, the Commissioner shall send a written request with appropriate justification to all the competent authorities of the other Member States concerned.

(2) Once the Commissioner has reached an agreement with the competent authorities of the other Member States concerned as to how to resolve the question in dispute within the period provided for in sub-regulation (1), he shall, without delay, notify this agreement to the affected person, as a decision that is binding on the Commissioner and enforceable by the affected person, subject to the affected person accepting the decision and renouncing the right to any other remedy, where applicable:

Provided that where proceedings regarding such other remedies have already commenced, the decision shall only become binding and enforceable once the affected person has provided evidence to the Commissioner and to the competent authorities of the other Member States concerned that action has been taken to terminate those proceedings. Such evidence shall be provided not later than sixty (60) days from the date on which such decision was notified to the affected person. The Commissioner shall then implement the decision without delay, irrespective of any time limits prescribed by Maltese law.

(3) Where the competent authorities of the Member States concerned have not reached an agreement on how to resolve the question in dispute within the period provided for in sub-regulation (1), the Commissioner shall inform the affected person indicating the general reasons for the failure to reach an agreement.

Dispute resolution by the Advisory Commission.

11. (1) Upon a request made by the affected person, the Commissioner shall take the necessary action for the setting up of an Advisory Commission in accordance with regulation 13 where:

(a) the complaint submitted by such affected person was rejected by the Commissioner under regulation 7(2) or, where the Commissioner has not rejected the complaint, the complaint was rejected by the competent authority of at least one (1) of the other Member States concerned under provisions of the national law of that Member State corresponding to regulation 7(2); or

(b) the Commissioner and the competent authorities of the other Member States concerned had accepted the complaint that was submitted by the affected person but failed to reach an agreement on how to resolve the question in dispute by mutual agreement within the time limit provided for in regulation 10(1).

The functions and obligations of an Advisory Commission and its members as provided for in these regulations shall be deemed to form part of its terms of reference.

(2) The affected person may only make a request under paragraph (a) of sub-regulation (1) if, in accordance with the laws of Malta or any applicable national rules of the Member State whose competent authority rejected the complaint in accordance with provisions in the national law of that Member State that correspond to regulation 7(2):

(a) no appeal can be made;

(b) no appeal is pending; or

(c) the affected person has formally renounced his right of appeal.

The request shall include a declaration to this effect.

(3) The affected person shall make the request to the Commissioner to set up an Advisory Commission in writing, not later than fifty (50) days from the date of receipt of the notification under regulation 7(1) or 10(3) or fifty (50) days from the date of delivery of the decision by the relevant court or judicial body under regulation 7(4), as the case may be.

(4) The Commissioner shall take the necessary steps for the setting up of the Advisory Commission by not later than one hundred and twenty (120) days from the receipt of the request referred to in the foregoing sub-regulations, and once the Advisory Commission is set up, its Chairperson shall inform the affected person thereof without delay.

(5) The Advisory Commission set up in the case of sub-regulation (1)(a) shall adopt a decision on the acceptance of the complaint within six (6) months from the date of its establishment. It shall notify the competent authorities of its decision within thirty (30) days of the adoption thereof.

(6) (a) Where the Advisory Commission set up in the case of sub-regulation (1)(a) has confirmed that all of the requirements under regulations 4 and 5 have been satisfied, the mutual agreement procedure provided for in regulation 10 shall be initiated at the request of the Commissioner or of the competent authority of any one (1) of the other Member States concerned. Where the request is made by the Commissioner, he shall notify the Advisory Commission, the competent authorities of the other Member States concerned and the affected person thereof. The period provided for in regulation 10(1) shall start from the date of the notification of the decision taken by the Advisory Commission of the acceptance of the complaint.

(b) Where none of the competent authorities of the Member States concerned has requested the initiation of the mutual agreement procedure as per paragraph (a) within sixty (60) days of the date of the notification of the decision of the Advisory Commission, the Advisory Commission shall provide an opinion on how to resolve the question in dispute as provided for in regulation 19(1). In such a case, for the purposes of regulation 19(1), the Advisory Commission shall be deemed to have been set up on the date on which that sixty (60) day period expired.

(7) In the case of paragraph (b) of sub-regulation (1), the Advisory Commission shall deliver an opinion on how to resolve the question in dispute in accordance with regulation 19(1).

Appointments by national appointing body.

12. (1) If an Advisory Commission is not set up within the period provided for in regulation 11(4), the relevant affected person may apply to the Administrative Review Tribunal (national appointing body) to set up the Advisory Commission.

(2) Where the Commissioner has failed to appoint at least one (1) independent person of standing and a substitute, the affected person may request the national appointing body to appoint an independent person of standing and a substitute from the list referred to in regulation 14:

Provided that if more than one (1) affected person is involved in the proceedings, a request to the Commissioner for the appointment of at least one (1) independent person of standing and a substitute may only be made by an affected person who is resident in Malta.

(3) The appointment of the independent persons and their substitutes under sub-regulations (1) or (2) shall be referred to the national appointing body only after the end of the one hundred and twenty (120) day period referred to in regulation 11(4), and within thirty (30) days after the end of that period.

The Advisory Commission.

13. (1) The Advisory Commission set up in accordance with regulation 11 shall have the following composition:

(a) one (1) Chairperson;

(b) one (1) representative of the competent authority of each of the Member States concerned:

Provided that on agreement between the competent authorities, the number of such representatives may be increased to two (2) for each competent authority; and

(c) one (1) independent person of standing, who shall be appointed by the competent authority of each of the Member States concerned from the list of independent persons of standing nominated by the Member States:

Provided that on agreement between the competent authorities, the number of such persons appointed may be increased to two (2) for each competent authority.

(2) The rules for the appointment of the independent persons of standing shall be agreed by the Commissioner together with the competent authorities of the other Member States concerned. Following the appointment of the independent persons of standing, a substitute shall be appointed for each of them according to the rules for the appointment of the independent persons in cases where the independent persons are prevented from carrying out their duties.

(3) Where the rules for the appointment of independent persons of standing have not been agreed to in accordance with sub-regulation (2), the appointment of such persons shall be carried out by drawing lots.

(4) Except where the independent persons of standing have been appointed by the national appointing body as provided in regulation 12, or by the competent court or national appointing body of another Member State as provided in the law of that other Member State by means of provisions corresponding to regulation 12, the Commissioner may object to the appointment of any particular independent person of standing for any reason agreed in advance between the competent authorities concerned or for any one (1) of the following reasons:

(a) that person belongs to or is working on behalf of one of the tax administrations concerned or was in such a situation at any time during the previous three (3) years;

(b) that person has, or has had, a material holding in or voting right in, or is or has been an employee of or adviser to any affected person concerned, at any time during the last five (5) years prior to the date of his appointment;

(c) that person does not offer a sufficient guarantee of objectivity for the settlement of the dispute or disputes to be decided;

(d) that person is an employee with an enterprise that provides tax advice or otherwise gives tax advice on a professional basis, or was in such a situation at any time during a period of at least three (3) years prior to the date of his appointment.

(5) The Commissioner may request that a person of standing who has been appointed in accordance with sub-regulation (2) or (3), or his substitute, shall 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 appearance of bias in the

proceedings. For a period of twelve (12) months after the opinion of the Advisory Commission was delivered, an independent person of standing who is part of the Advisory Commission shall not be in a situation that would have given cause to a competent authority to object to his appointment as provided for in sub-regulation (4) had he been in that situation at the time of appointment to that Advisory Commission.

(6) The representatives of the competent authorities and the independent persons of standing appointed in accordance with sub-regulation (1) shall elect a Chairperson from the list of persons referred to in regulation 14. Unless the representatives of the competent authority of each of the Member States concerned and the independent persons of standing agree otherwise, the Chairperson shall be a judge.

The list of independent persons of standing.

14. (1) For the purpose of the list of independent persons of standing referred to in regulation 13, the Commissioner shall nominate at least three (3) individuals who are competent and independent, and who can act with impartiality and integrity.

(2) The Commissioner shall notify the Commission of the names of the independent persons of standing whom he has nominated. The Commissioner shall also provide the Commission with complete and up-to-date information regarding those persons' professional and academic background, their competence, their expertise and any conflicts of interest that they may have. The Commissioner may specify in the notification which of those persons may be appointed as a Chairperson.

(3) The Commissioner shall inform the Commission of any changes to the list of independent persons without delay.

(4) The Commissioner shall put in place procedures for removing any person whom he has appointed from the list of independent persons of standing if that person ceases to be independent.

(5) Where, taking into consideration the relevant provisions of this regulation, the Commissioner has reasonable cause to object to an independent person of standing appointed by the competent authority of a Member State remaining in the above mentioned list for reasons of lack of independence, he shall inform the Commission and provide appropriate evidence to support its concern.

(6) Where the Commissioner is informed by the Commission of an objection to an independent person of standing appointed by him and of supporting evidence, he shall within six (6) months take the

necessary steps to investigate the complaint, and shall decide whether to retain or remove that person from the list. The Commissioner shall then notify the Commission accordingly without delay.

(7) The list of independent persons of standing referred to in regulation 13 shall consist of the independent persons of standing nominated by the Commissioner in accordance with this regulation and of all the other independent persons of standing nominated by the other Member States concerned in accordance with their respective national laws.

The Alternative Dispute Resolution Commission.

15. (1) The Commissioner may agree with the competent authorities of the other Member States concerned to set up an Alternative Dispute Resolution Commission instead of an Advisory Commission to deliver an opinion on how to resolve the question in dispute. The Commissioner may also agree with the competent authorities of the other Member States concerned to set up an Alternative Dispute Resolution Commission in the form of a committee that is of a permanent nature, known as a "Standing Committee".

(2) Except for the rules regarding the independence of its members set out in regulations 13(4) and (5), the Alternative Dispute Resolution Commission may differ regarding its composition and form from the Advisory Commission. An Alternative Dispute Resolution Commission may apply, where appropriate, any dispute resolution processes or technique to solve the question in dispute in a binding manner. As an alternative to the type of dispute resolution process applied by the Advisory Commission, i.e. the independent opinion process, any other type of dispute resolution process, including the "final offer" arbitration process (otherwise known as "last best offer" arbitration), can be agreed by the Commissioner under this regulation together with the competent authorities of the other Member States concerned and applied by the Alternative Dispute Resolution Commission.

(3) The Commissioner shall agree on the Rules of Functioning in accordance with regulation 16, together with the competent authorities of the other Member States concerned.

(4) Regulations 17 and 18 shall apply to the Alternative Dispute Resolution Commission unless otherwise agreed to in the Rules of Functioning referred to in regulation 16.

Rules of Functioning.

16. (1) Within the one hundred and twenty (120) day period provided for in regulation 11(4), the Commissioner shall notify the affected person with the following:

(a) the Rules of Functioning for the Advisory Commission or the Alternative Dispute Resolution Commission;

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

(c) references to any applicable legal provisions in Maltese law and to any applicable agreements or conventions.

(2) The Rules of Functioning shall be signed by the Commissioner together with the competent authorities of the other Member States concerned. The Rules of Functioning shall provide in particular:

(a) the description and the characteristics of the question in dispute;

(b) the terms of reference on which the competent authorities of the Member States concerned agree as regards the legal and factual questions to be resolved;

(c) the form of the dispute resolution body, which shall be either an Advisory Commission or an Alternative Dispute Resolution Commission, as well as the type of process for any Alternative Dispute Resolution, if the process differs from the independent opinion process applied by an Advisory Commission;

(d) the time frame for the dispute resolution procedure;

(e) the composition of the Advisory Commission or Alternative Dispute Resolution Commission (including the number and names of the members, details of their competence and qualifications, and disclosing any conflicts of interest of the members);

(f) the rules governing the participation of the affected person(s) and third parties in the proceedings, exchanges of memoranda, information and evidence, the costs, the type of dispute resolution process to be used, and any other relevant procedural or organisational matters;

(g) the logistical arrangements for the Advisory Commission's proceedings and delivery of its opinion:

Provided that if an Advisory Commission is set up to deliver an opinion under regulation 11(1)(a), only the information referred to in paragraphs (a), (d), (e) and (f) of this

sub-regulation shall be set out in the Rules of Functioning.

(3) Where the Rules of Functioning are incomplete or were not notified to the affected person, Standard Rules of Functioning established by the Commission in accordance with Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union shall apply.

(4) Where the Commissioner has not notified the Rules of Functioning to the affected person in accordance with sub-regulations (1) and (2), or where the competent authorities of any one (1) of the other Member States concerned have not notified the Rules of Functioning to the affected person, the independent persons of standing and the Chairperson shall complete the Rules of Functioning on the basis of the standard rules referred to in sub-regulation (3) and shall send them to the affected person within two (2) weeks from the date that the Advisory Commission or Alternative Dispute Resolution Commission was set up.

(5) Where the independent persons and the Chairperson have not agreed on the Rules of Functioning or have not notified them to the affected person, the affected person or affected persons may submit an application to the Civil Court, First Hall, or to the competent court in one (1) of the other Member States concerned in order to obtain an order for the implementation of the Rules of Functioning.

Costs of proceedings.

17. (1) Except as provided in sub-regulation (2), and unless the Commissioner has agreed otherwise with the competent authorities of the other Member States concerned, the following costs shall be shared equally among the Member States concerned:

(a) the expenses of the independent persons of standing, which are to be an amount equivalent to the average of the usual amount reimbursed to high ranking civil servants of the Member States concerned; and

(b) the fees of the independent persons, where applicable, which are to be limited to one thousand euro (€1,000) per person per day for every day on which the Advisory Commission or Alternative Dispute Resolution Commission meets.

(2) The Commissioner shall not bear any costs that are incurred by the affected person.

(3) Where the affected person has made:

(a) a notification of withdrawal of complaint under regulation 9 or under corresponding provisions of the national

law of any other Member State concerned; or

(b) a request under the provisions of regulation 11(1) or under corresponding provisions of the national law of any other Member State concerned following a rejection made under regulation 10(1) or under corresponding provisions of the national law of any other Member State concerned, and the Advisory Commission has decided that the relevant competent authorities were correct in rejecting the complaint,

and the competent authorities of the Member States concerned so agree, all the costs referred to in sub-regulation (1)(a) and (b) shall be borne by the affected person.

Information, evidence and hearings.

18. (1) For the purposes of the procedure referred to in regulation 11, where the Commissioner so agrees with the competent authorities of the other Member States concerned, the affected person(s) may provide the Advisory Commission or Alternative Dispute Resolution Commission with any information, evidence or documents that may be relevant for the decision.

(2) The affected person(s) and the Commissioner shall provide any information, evidence or documents upon request by the Advisory Commission or Alternative Dispute Resolution Commission. However, the Commissioner may refuse to provide information to the Advisory Commission in any one (1) of the following cases, where:

(a) obtaining the information requires carrying out administrative measures that are against Maltese national law;

(b) the information cannot be obtained under Maltese national law;

(c) the information concerns trade secrets, business secrets, industrial secrets, professional secrets or trade processes;

(d) the disclosure of the information is contrary to public policy.

(3) Affected persons may, at their request and with the consent of the Commissioner and the competent authorities of the other Member States concerned, appear or be represented before an Advisory Commission or Alternative Dispute Resolution Commission. Affected persons shall appear or be represented before it upon request by the Advisory Commission or Alternative Dispute Resolution Commission.

(4) The independent persons of standing or any other member

shall be subject to obligations of professional secrecy in relation to information they receive in their capacity as members of an Advisory Commission or Alternative Dispute Resolution Commission.

(5) Affected persons, and where applicable, their representatives, shall undertake to treat any information (including knowledge of documents) that they receive during such proceedings as secret. The affected person and his representatives shall make a declaration to this effect to the Commissioner and the competent authorities of the other Member States concerned when so requested during the proceedings.

(6) The provisions of the Professional Secrecy Act and of article 257 of the Criminal Code shall apply in respect of any breach of the secrecy obligations imposed under this regulation. Cap. 377. Cap. 9.

(7) The Commissioner shall inform the Commission of any measures taken in order to penalise any breach of secrecy obligation provided for in this regulation.

19. (1) An Advisory Commission or Alternative Dispute Resolution Commission shall deliver its opinion to the Commissioner and to the competent authorities of the other Member States concerned no later than six (6) months after the date on which it was set up. Where the Advisory Commission or Alternative Dispute Resolution Commission considers that the question in dispute is such that it would need more than six (6) months to deliver an opinion, this period may be extended by three (3) months. The Advisory Commission or Alternative Dispute Resolution Commission shall inform the Commissioner, the competent authorities of the other Member States concerned and the affected persons of any such extension. The opinion of the Advisory Commission or Alternative Dispute Resolution Commission.

(2) The Advisory Commission or Alternative Dispute Resolution Commission shall base its opinion on the provisions of the applicable agreement or convention referred to in regulation 2(2) as well as on any applicable national rules.

(3) The Advisory Commission or Alternative Dispute Resolution Commission shall adopt its opinion by a simple majority of its members. Where a majority cannot be reached, the vote of the Chairperson shall determine the final opinion. The Chairperson shall communicate the opinion of the Advisory Commission or Alternative Dispute Resolution Commission to the Commissioner and to the competent authorities of the other Member States concerned.

20. (1) The Commissioner shall agree with the competent authorities of the other Member States concerned on how to resolve the question in dispute within six (6) months of the notification of the Final decision.

opinion of the Advisory Commission or Alternative Dispute Resolution Commission.

(2) The Commissioner together with the competent authorities of the other Member States concerned may take a decision which deviates from the opinion of the Advisory Commission or Alternative Dispute Resolution Commission. However, if the Commissioner fails to reach an agreement as to how to resolve the question in dispute, the Commissioner shall be bound by that opinion.

(3) The Commissioner shall notify the final decision on the resolution of the question in dispute to the affected person without delay. In the absence of such notification within thirty (30) days of the decision having been taken, the affected person shall be entitled to file an application in the Civil Court, First Hall requesting the Court to order the Commissioner to provide a copy of the final decision without further delay.

(4) The final decision shall be binding on the Commissioner and shall not constitute a precedent.

(5) The final decision shall be implemented subject to the affected person(s) accepting the final decision and renouncing the right to any domestic law remedy within sixty (60) days from the date when the final decision was notified, where applicable.

(6) Except where the relevant court or other judicial body of a Member State concerned decides according to its applicable national rules on remedies and applying the criteria under regulation 13 that there was lack of independence, the final decision shall, where applicable, be implemented under the Income Tax Acts and the taxation under those Acts shall be amended accordingly, irrespective of any time limits prescribed by Maltese law.

(7) Where the Commissioner fails to implement the final decision, the affected person shall be entitled to present an application to appeal as if the Commissioner's failure were an assessment issued under the Income Tax Management Act and as if the Commissioner has refused an objection to an assessment duly filed by the affected person, and the relevant provisions of that Act relating to appeals shall apply *mutatis mutandis*:

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Provided that the time within which an appeal may be made in accordance with article 35(1) of the Income Tax Management Act shall run from the expiration of six (6) months from the date on which the affected person is served with a copy of the final decision.

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Interaction with national proceedings and derogations.

21. (1) The fact that the action that gave rise to a question in dispute has become final under the Income Tax Acts shall not prevent the affected persons from having recourse to the procedures provided for in these regulations.

(2) The submission of the question in dispute to the mutual agreement procedure or to the dispute resolution procedure under regulations 10 and 11 respectively shall not prevent the Commissioner from initiating or continuing judicial proceedings or proceedings for administrative and criminal penalties in relation to the same matters.

(3) Affected persons may have recourse to the remedies available to them under the national law of the Member States concerned. However, where the affected person has commenced proceedings to seek such a remedy, the terms of periods referred to in regulations 8 and 10(1) respectively shall commence from the date on which a judgement delivered in those proceedings has become final or on which those proceedings have otherwise been definitively concluded or where the proceedings have been suspended.

(4) Where a decision on a question in dispute delivered by the Administrative Review Tribunal or the Court of Appeal has been rendered final and conclusive in terms of article 38 of the Income Tax Management Act: Cap. 372.

(a) before an agreement has been reached by the competent authorities of the Member States concerned under the mutual agreement procedure under regulation 10 on that question in dispute, the Commissioner shall notify the competent authorities of the other Member States concerned of that decision and that the procedure is to be terminated as from the date of such notification;

(b) before the affected person has made a request under regulation 11(1), the provisions of regulation 11(1) do not apply if the question in dispute had remained unresolved during the whole of the mutual agreement procedure under regulation 10, in which case the Commissioner shall inform the other competent authorities of the Member States concerned of the effect of that decision;

(c) the dispute resolution process under regulation 11 is to be terminated if the decision was rendered at any time after an affected person has made a request under regulation 11(1) but before the Advisory Commission or the Alternative Dispute Resolution Commission has delivered its opinion to the competent authorities of the other Member States concerned, in

conformity with regulation 19, in which case the Commissioner is to inform the competent authorities of the other Member States concerned and the Advisory Commission or the Alternative Dispute Resolution Commission of the effect of that decision.

(5) The submission of a complaint as provided under regulation 4 shall put an end to any other ongoing proceedings under the mutual agreement procedure or dispute resolution procedure under an agreement or convention that is being interpreted or applied in relation to the relevant question in dispute. Such other ongoing proceedings concerning the relevant question in dispute shall come to an end with effect from the date of the first receipt of the complaint by any one (1) of the competent authorities of the Member States concerned.

(6) By way of derogation from regulation 11, the Commissioner may deny access to the dispute resolution procedure under that regulation in cases where penalties were imposed under the Income Tax Acts in relation to the adjusted income or capital for tax fraud, wilful default and gross negligence. Where judicial or administrative proceedings were commenced that could potentially lead to such penalties, and these proceedings are being conducted simultaneously with any of the proceedings referred to in these regulations, the Commissioner may stay the proceedings under these regulations as from the date of acceptance of the complaint until the date of the final outcome of those proceedings.

(7) The Commissioner may deny access to the dispute resolution procedure under regulation 11 on a case-by-case basis where a question in dispute does not involve double taxation. In such a case, the Commissioner shall inform the affected person and the competent authorities of the other Member States concerned without delay.

Special provisions for individuals and smaller undertakings.

22. (1) Where the affected person is either:

(a) an individual; or

(b) 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),

the affected person may submit the complaints, replies to a request for additional information, withdrawals and requests specified in regulations 4, 5(2), 9 and 11(1), respectively or in provisions of the law of any Member State concerned that correspond to those regulations ("communications"), by way of derogation from those

provisions, only to the competent authority of the Member State in which the affected person is resident.

(2) When the Commissioner receives any such communication, he shall, within two (2) months, notify the competent authorities of all the other Member States concerned at the same time.

(3) Once a notification of any such communication has been made by the competent authority that receives it to the other competent authorities of the Member States concerned, the affected person shall be deemed to have submitted the communication to all the Member States concerned as of the date of such notification.

(4) When the Commissioner receives from an affected person referred to in sub-regulation (1) additional information requested under regulation 5(2), he shall transmit a copy to the competent authorities of all the other Member States concerned at the same time.

(5) Once a submission has been made to the competent authorities of all Member States of a copy of additional information received by the Commissioner as aforesaid or received by the competent authority of any other Member State concerned in terms of provisions of the law of that Member State corresponding to regulation 5(2), it shall be deemed that additional information has been received by all Member States concerned as at the date of such receipt of information.

Publicity.

23. (1) The Commissioner may agree with the competent authorities of the other Member States concerned to publish the final decisions referred to in regulation 20 in their entirety, subject to the consent of each one (1) of the affected persons concerned.

(2) Where the competent authorities or affected person concerned do not consent to publishing the final decision in its entirety, the Commissioner shall publish an abstract of the final decision. That abstract shall contain a description of the issue and the subject matter, the date, the tax periods involved, the legal basis, the industry sector, and a short description of the final outcome. It shall also include a description of the method of arbitration used. The Commissioner shall send the information to be published in accordance with this sub-regulation to the affected person before its publication. The affected person may, no later than 60 days from the receipt of such information, request the Commissioner not to publish information that concerns any trade, business, industrial or professional secret, information that concerns a trade process, or information that is contrary to public policy.

(3) The Commissioner shall notify the information to be published in accordance with sub-regulation (2) to the Commission without delay.

(4) The final decision, whether in its entirety or an abstract thereof, shall be published on the website of the Office of the Commissioner for Revenue.

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